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15 KELLY SAGONA

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

14 KELLY SAGONA, an individual, on
15 behalf of herself, and all others similarly
16 aggrieved,

17 Plaintiff,

18 v.

19
20 BARRETT BUSINESS SERVICES,
21 INC., a Maryland corporation;
22 SCRIPTDROP, INC., a Delaware
23 corporation; PROFESSIONAL
24 COURIER & LOGISTICS, INC. dba PCL
25 STAFF, a California corporation; and
26 DOES 1-100, inclusive,

27 Defendants.
28

CASE NO. **21STCV43062**

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

1 Plaintiff KELLY SAGONA (“PLAINTIFF”), an individual, on behalf of PLAINTIFF
2 and all others similarly aggrieved, hereby files this Complaint against Defendant BARRETT
3 BUSINESS SERVICES, INC. (“BBSI”), Defendant SCRIPTDROP, INC. (“SCRIPTDROP”),
4 Defendant PROFESSIONAL COURIER & LOGISTICS, INC. dba PCL STAFF (“PCL
5 STAFF”), and DOES 1-100, inclusive (collectively referred to as “DEFENDANTS”).
6 PLAINTIFF is informed and believes and thereon alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in Los Angeles County, California, because DEFENDANTS have not designated a
10 principal place of business in the State of California such that PLAINTIFF may chose a
11 convenient venue within the state. Moreover, DEFENDANTS transact business within this
12 judicial district and some of the complained of conduct occurred in this judicial district. *See also*
13 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
14 PAGA action is proper in any county where the defendants committed Labor Code violations
15 against some of its employees).

16 **THE PARTIES**

17 2. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF
18 worked for DEFENDANTS in the State of California as a non-exempt, hourly-paid employee,
19 during the relevant time period.

20 3. Defendant BBSI is a Maryland corporation that, at all relevant times, was authorized to
21 do business within the State of California and is doing business in the State of California.

22 4. Defendant SCRIPTDROP is a Delaware corporation that, at all relevant times, was
23 authorized to do business within the State of California and is doing business in the State of
24 California.

25 5. Defendant PCL STAFF is a California corporation that, at all relevant times, was
26 authorized to do business within the State of California and is doing business in the State of
27 California.

1 6. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
2 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant
3 by said fictitious names. Each of the Defendants designated herein as a DOE is legally
4 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend
5 this Complaint to reflect the true names and capacities of the Doe Defendants when such
6 identities become known.

7 7. PLAINTIFF is further informed and believes that, at all relevant times, each Defendant
8 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
9 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
10 interest of some or all of the other DEFENDANTS, and was engaged with some or all of the
11 other defendants in a joint enterprise for profit, and bore such other relationships to some or all
12 of the other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged
13 in this complaint. PLAINTIFF is further informed and believes and thereon alleges that each
14 Defendant acted pursuant to and within the scope of the relationships alleged above, and that at
15 all relevant times, each Defendant knew or should have known about, authorized, ratified,
16 adopted, approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

17 **JOINT LIABILITY**

18 8. Under California law, the definition of the terms “to employ” are broadly construed
19 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
20 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or
21 (3) to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*,
22 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising
23 control was to reach situations in which multiple entities control different aspects of the
24 employment relationship. Supervision of the work, in the specific sense of exercising control
25 over how services are properly performed, is properly viewed as one of the “working conditions”
26 mentioned in the wage order. *Id.* at 76. A joint employer relationship exists when one entity (such
27 as a temporary employment agency) hires and pays a worker, and the other entity supervises the
28 work. *Id.*

1 9. During PLAINTIFF's assignment with DEFENDANTS, PLAINTIFF and similarly
2 aggrieved employees were jointly employed by these DEFENDANTS for purposes of the Wage
3 Orders, under the alternative definitions of "to employ" adopted by the California Supreme Court
4 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
5 hours and working conditions of PLAINTIFF and similarly aggrieved employees; (2) suffered
6 or permitted Plaintiff and similarly aggrieved employees to work for them; and, (3) engaged
7 Plaintiff and similarly aggrieved employees to work for them.

8 10. In particular, BBSI and PCL STAFF hired PLAINTIFF and entered into a written
9 employment agreement with PLAINTIFF. During PLAINTIFF's employment, BBSI and PCL
10 STAFF maintained control over many aspects of PLAINTIFF's employment, including, among
11 other things, having the authority to discipline her, change her job assignment, change her work
12 hours, change her rates of pay, and to terminate her employment.

13 11. In addition, when she was first hired, BBSI and PCL STAFF provided PLAINTIFF
14 with orientation and training materials. BBSI and PCL STAFF issued PLAINTIFF written
15 policies concerning meal periods, rest breaks, timekeeping, hours worked, and payment of her
16 wages, with which PLAINTIFF was required to comply. Among other things, these policies
17 provided that PLAINTIFF's weekly time records be submitted to BBSI; and, BBSI was supposed
18 to process her time records and pay PLAINTIFF for all hours worked. BBSI exercised ultimate
19 control over the payment of PLAINTIFF's wages, as BBSI issued PLAINTIFF her paychecks.
20 Finally, BBSI and PCL STAFF directed PLAINTIFF to comply with SCRIPTDROP's policies
21 and directions. PLAINTIFF is informed and believes that BBSI and PCL STAFF exercised the
22 same control over, applied the same policies and practices, and engaged in the same acts and
23 omissions with regard to the other aggrieved employees.

24 12. SCRIPTDROP similarly suffered or permitted PLAINTIFF to work for them or engaged
25 PLAINTIFF to work for them. PLAINTIFF is informed and believes that SCRIPTDROP entered
26 into a written agreement with BBSI and/or PCL STAFF, pursuant to which SCRIPTDROP paid
27 BBSI and/or PCL STAFF to provide it with workers, including PLAINTIFF, to conduct
28 SCRIPTDROP'S business operations – namely, picking up medications from local pharmacies

1 and delivering them to SCRIPTDROP's customers. SCRIPTDROP suffered or permitted
2 PLAINTIFF to work at SCRIPTDROP and for the entirety of PLAINTIFF's employment.

3 13. SCRIPTDROP further exercised control over PLAINTIFF's wages, hours and working
4 conditions. At some time in or around November 2020 through January 2021, SCRIPTDROP
5 called PLAINTIFF on PLAINTIFF's personal cellphone and verbally disciplined PLAINTIFF
6 for delivering the wrong medication to a customer, threatening to terminate PLAINTIFF. During
7 this phone call with PLAINTIFF, SCRIPTDROP further claimed it "owned" BBSI and/or PCL
8 STAFF and was in charge of the entire division for which PLAINTIFF worked. Accordingly,
9 SCRIPTDROP also: (1) set PLAINTIFF's work hours and provided PLAINTIFF with
10 PLAINTIFF's work schedule; (2) provided PLAINTIFF with written policies regarding meal
11 periods and rest breaks, with which PLAINTIFF was required to comply; (3) directly supervised
12 PLAINTIFF's work through its employees; (4) assigned PLAINTIFF job duties and trained
13 PLAINTIFF on said job duties; (5) exercised authority to reprimand and counsel PLAINTIFF
14 regarding any work performance and other issues; (6) exercised authority to end PLAINTIFF's
15 work assignment at any time, which essentially equated to a termination of employment as
16 PLAINTIFF was not guaranteed any other job assignments; (7) required PLAINTIFF to use its
17 timekeeping system for purposes of recording time worked; (8) determined whether and when
18 PLAINTIFF would receive meal periods and rest breaks; (9) subjected PLAINTIFF to unlawful
19 schedules for taking meal periods and rest breaks; and, (10) was responsible for recording when
20 PLAINTIFF began and ended work shifts. On information and belief, SCRIPTDROP issued
21 further written policies and practices and guidelines governing PLAINTIFF's working
22 conditions with which PLAINTIFF was required to comply. PLAINTIFF is informed and
23 believes that SCRIPTDROP exercised the same control over, applied the same policies and
24 practices, and engaged in the same acts and omissions with regard to the other aggrieved
25 employees.

26 **SCRIPTDROP'S LIABILITY UNDER CALIFORNIA LABOR CODE SECTION 2810.3**

27 14. California Labor Code section 2810.3(b)(1) provides that "a client employer shall share
28 with the labor contractor all civil legal responsibility and civil liability for all workers supplied

1 by that labor contractor for . . . the payment of wages.” A “labor contractor” means “an individual
2 or entity that supplies, either with or without a contract, a client employer with workers to
3 perform labor within the client employer’s usual course of business.” Cal. Labor Code section
4 2810.3(a)(3). A “client employer” is “a business entity, regardless of its form, that obtains or is
5 provided workers to perform labor within its usual course of business from a labor contractor.”
6 Cal. Labor Code section 2810.3(a)(1)(A). Client employers do not include a business entity with
7 a workforce of fewer than twenty-five workers or with five or fewer workers provided by a labor
8 contractor or labor contractors to the client employer at any time. Cal. Labor Code section
9 2810.3(a)(1)(B). “Usual course of business” means “the regular and customary work of a
10 business, performed within or upon the premises or worksite of the client employer.” Cal. Labor
11 Code section 2810.3(a)(6).

12 15. BBSI and PCL STAFF are “labor contractors” in that each supplies a client employer,
13 SCRIPTDROP, with workers to perform labor within SCRIPTDROP’S usual course of business,
14 namely, performing pharmaceutical delivery services.

15 16. SCRIPTDROP is a “client employer” as it obtains or is provided workers to perform
16 labor within its usual course of business from labor contractors, including BBSI. SCRIPTDROP
17 has a workforce of at least twenty-five workers and each is supplied with at least five workers
18 from a labor contract at any given time.

19 17. Under California Labor Code Section 2810.3, SCRIPTDROP, a client employer, shares
20 with the labor contractors, BBSI and PCL STAFF, all civil legal responsibility and civil liability
21 for all workers supplied by that labor contractor for the payment of wages.

22 18. PLAINTIFF complied with Labor Code Section 2810.3 by mailing certified a letter
23 outlining the substance of the allegations alleged herein to the “Client Employer,” namely
24 SCRIPTDROP, thirty (30) days before filing suit.

25 19. Whenever and wherever reference is made in this complaint to any act or failure to act
26 by a DEFENDANTS or co-Defendant, such allegations and references shall also be deemed to
27 mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.
28

1 **FACTUAL AND LEGAL ALLEGATIONS**

2 20. During the one year and sixty-five-day period preceding filing of this Complaint,
3 PLAINTIFF was employed at all relevant times by DEFENDANTS as a non-exempt employee
4 in the State of California. DEFENDANTS, at all relevant times, exercised control over
5 PLAINTIFF and the other Aggrieved Employees (as defined below) and suffered and/or
6 permitted them to work.

7 21. PLAINTIFF was employed by DEFENDANTS as a non-exempt, pharmacy delivery
8 driver from approximately November 2020 to January 2021. PLAINTIFF was directly employed
9 by BBSI and/or PCL STAFF. BBSI and/or PCL STAFF placed PLAINTIFF to work for
10 SCRIPTDROP, picking up prescription medications and delivering them to SCRIPTDROP's
11 customers.

12 22. PLAINTIFF was typically scheduled to work six (6) hours, Mondays through Fridays.
13 During the month of December 2020, PLAINTIFF consistently worked Mondays through
14 Fridays, approximately 6 or more hours per day.

15 23. PLAINTIFF does not possess records of PLAINTIFF's time worked with
16 DEFENDANTS. DEFENDANTS are in sole possession of PLAINTIFF's time records. On
17 information and belief, PLAINTIFF alleges PLAINTIFF worked 6 or more hours on December
18 1, 2021; December 2, 2020; December 3, 2020; December 4, 2020; December 7, 2020; December
19 8, 2020; December 9, 2020; December 10, 2020; December 11, 2020; December 14, 2020;
20 December 15, 2020; December 16, 2020; December 17, 2020; December 18, 2020; December
21 21, 2020; December 22, 2020; December 23, 2020; December 28, 2020; December 29, 2020;
22 and December 30, 2020.

23 24. PLAINTIFF does not possess records of her hours worked, pay, or pay periods.
24 DEFENDANTS did not provide PLAINTIFF with accurate itemized wage statements at any time
25 during her employment with DEFENDANTS between November 2020 through January 2021.

26 25. PLAINTIFF picked up deliveries from a CVS Pharmacy and a Ralphs Pharmacy
27 located in Palos Verdes, California and delivered prescriptions to DEFENDANTS' customers,
28 located in the Palos Verdes area.

1 26. At the start of her shift, PLAINTIFF would arrive at the CVS Pharmacy or Ralphs
2 Pharmacy in Palos Verdes and login to the SCRIPTDROP interface to accept deliveries. PCL
3 STAFF and/or SCRIPTDROP would dispatch PLAINTIFF to pick up certain medications and
4 where to deliver the medications to DEFENDANTS' clients. PLAINTIFF would be assigned
5 anywhere from two to 40 deliveries in a shift.

6 27. Throughout her employment with DEFENDANTS, DEFENDANTS clocked
7 PLAINTIFF out for thirty minutes to an hour for a meal period, when PLAINTIFF was still
8 making deliveries and not relieved of all duties or employer control.

9 28. PLAINTIFF was consistently unable to take timely, off duty, thirty-minute,
10 uninterrupted meal periods, often being forced to take late meal periods and/or work through part
11 or all of PLAINTIFF's meal periods due to the nature and constraints of PLAINTIFF's job duties
12 and or commentary from DEFENDANTS pressuring PLAINTIFF to take non-compliant breaks
13 or skip breaks completely to take additional deliveries. Nevertheless, DEFENDANTS
14 implemented a policy and practice of automatically deducting thirty minutes to an hour per shift
15 for these missed/improper meal periods, despite having actual and/or constructive knowledge
16 that PLAINTIFF did not receive compliant meal periods.

17 29. Based on further information and belief, DEFENDANTS rounded the start and end
18 times of employee meal periods and start and end time of employee shifts resulting in
19 PLAINTIFF not being paid for all time worked. PLAINTIFF is further informed and believes
20 and thereon alleges that Defendant had actual or constructive knowledge that its time-rounding
21 and auto-deduction policies and practices resulted in the denial of lawful meal periods to
22 PLAINTIFF and the underpayment of wages owed PLAINTIFF, in violation of California's
23 minimum wage and meal period laws. DEFENDANTS never paid PLAINTIFF an additional
24 hour of wages at her regular rate of pay for each workday a proper meal period was not provided.

25 30. Because PLAINTIFF's time and payroll records are in the sole possession of
26 DEFENDANTS, PLAINTIFF alleges on information and belief, that DEFENDANTS clocked
27 PLAINTIFF out for a meal break every day she worked for DEFENDANTS, but failed to relieve
28 her of all duties or otherwise interrupted her meal period to assign PLAINTIFF with additional

1 deliveries, including but not limited to on the following dates for which PLAINTIFF worked a
2 shift that would qualify her for at least one meal period: December 1, 2021; December 2, 2020;
3 December 3, 2020; December 4, 2020; December 7, 2020; December 8, 2020; December 9, 2020;
4 December 10, 2020; December 11, 2020; December 14, 2020; December 15, 2020; December
5 16, 2020; December 17, 2020; December 18, 2020; December 21, 2020; December 22, 2020;
6 December 23, 2020; December 28, 2020; December 29, 2020; and December 30, 2020.

7 31. DEFENDANTS did not advise PLAINTIFF that meal breaks should be free of all duties
8 and employer control.

9 32. DEFENDANTS did not authorize or permit PLAINTIFF to take rest breaks.
10 DEFENDANTS did not advise PLAINTIFF when rest breaks should be taken, how long rest
11 breaks should be, how many rest breaks she should receive in a given shift, nor that rest breaks
12 should be free of all duties and employer control.

13 33. PLAINTIFF did not receive compliant, timely ten-minute rest periods every four (4)
14 hours worked or major fraction thereof. Any purported rest periods would be interrupted, cut
15 short, on duty, and or late due to the nature and constraints of her job duties and or commentary
16 from DEFENDANTS pressuring her to skip breaks completely/take non-compliant breaks.
17 PLAINTIFF was pressured to make her deliveries according to a designated schedule such that
18 rest breaks were only taken once jobs were completed/as time permitted. DEFENDANTS had
19 no policy in place nor instruction as to the taking or timing of rest periods. PLAINTIFF was
20 never paid a rest period premium for any missed/improper rest period.

21 34. Because PLAINTIFF's time and payroll records are in the sole possession of
22 DEFENDANTS, PLAINTIFF alleges on information and belief, that DEFENDANTS failed to
23 relieve her of all duties or authorize and permit PLAINTIFF to take rest breaks, including but
24 not limited to on the following dates for which PLAINTIFF worked a shift that would qualify
25 her for at least one rest break: December 1, 2021; December 2, 2020; December 3, 2020;
26 December 4, 2020; December 7, 2020; December 8, 2020; December 9, 2020; December 10,
27 2020; December 11, 2020; December 14, 2020; December 15, 2020; December 16, 2020;
28 December 17, 2020; December 18, 2020; December 21, 2020; December 22, 2020; December

23, 2020; December 28, 2020; December 29, 2020; and December 30, 2020.

35. PLAINTIFF was paid an hourly rate plus \$.28 cents per mile. PLAINTIFF was informed her hourly rate would begin at \$18.00 per hour, but PLAINTIFF was paid \$13.00 per hour.

36. PLAINTIFF was not paid for all hours worked by virtue of DEFENDANTS' automatic meal period deduction policy, DEFENDANTS' practice for on-duty or interrupted unpaid meal periods, and DEFENDANTS' practice of paying PLAINTIFF for scheduled hours instead of actual time worked.

37. DEFENDANTS failed to furnish PLAINTIFF with complete and accurate wage statements in compliance with Labor Code section 226. PLAINTIFF's wage statements do not accurately reflect, the total gross and net wages earned, including, all earned minimum wages, all accrued and owed sick leave, and do not accurately reflect all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Notably, due to DEFENDANTS's unlawful automatic deduction, rounding, payment according to scheduled hours and unlawful meal period policies described herein, DEFENDANTS' wage statements fail to reflect the true total hours PLAINTIFF worked, a requirement of Labor Code section 226.

38. DEFENDANTS communicated with PLAINTIFF via text message and calls to PLAINTIFF's personal cellphone. PLAINTIFF had to use a map application in her personal cellphone to locate delivery addresses of customers. DEFENDANTS required PLAINTIFF use her personal vehicle to make deliveries on behalf of DEFENDANTS. PLAINTIFF was not reimbursed for the business use of her personal cellphone and was not fully reimbursed for gas, mileage, or the wear and tear on her personal vehicle.

39. PLAINTIFF was improperly required to pay for business expenses that are supposed to be the responsibility of the employer, as described above. While DEFENDANTS purported to compensate for vehicle-related expenses, the amount offered fell far below the Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period. Furthermore, DEFENDANTS' new hire packet promised increased rates when gas prices rose. However, when

1 DEFENDANTS failed to fully reimburse PLAINTIFF for all gas expenditures made while
2 working for DEFENDANTS. DEFENDANTS' failure to provide PLAINTIFF with full
3 reimbursement for all reasonable expenses associated with carrying out her duties required
4 PLAINTIFF to subsidize and/or carry the burden of business expenses in violation of Labor Code
5 section 2802.

6 40. Upon separation of employment, PLAINTIFF's final paycheck was not timely provided
7 to PLAINTIFF, and PLAINTIFF's final paycheck, once provided, did not include all wages
8 owed as it was devoid of, including but not limited to, all earned and unpaid minimum wages.

9 41. Based on information and belief, DEFENDANTS required PLAINTIFF to submit to
10 an unlawful criminal and/or financial background check as a condition of obtaining and/or
11 holding employment in violation of Labor Code sections 1024.5 and/or 432.7. Based on further
12 information and belief, DEFENDANTS also required PLAINTIFF to agree in writing to
13 unlawful background checks not in conformity with the requirements of Investigative Consumer
14 Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and the Fair Credit
15 Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), in violation of Labor Code section
16 432.5.

17 **PAGA**

18 42. PLAINTIFF brings this complaint under the Private Attorneys General Act of 2004,
19 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State
20 of California, regarding violations of the Labor Code as to all similarly aggrieved individuals
21 employed by DEFENDANTS in the State of California as a non-exempt employee. This action
22 is brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

23 43. Under Labor Code section 2699.3, the LWDA must give written notice by certified
24 mail to the parties that it intends to investigate the alleged violations within 65 days of the date
25 of PLAINTIFF's written notice. PLAINTIFF has complied with the administrative exhaustion
26 procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. PLAINTIFF
27 gave timely written notice by certified mail to DEFENDANTS of the violation of various
28 provisions of the California Labor Code as alleged in this complaint and filed notice of the

1 violations online with the Labor and Workforce Development Agency (“LWDA”). PLAINTIFF
2 filed PLAINTIFF’s notice with the LWDA on September 7, 2021 and served DEFENDANTS
3 via certified mail. (See **Exhibit 1** – PAGA Letter). The LWDA assigned PLAINTIFF the
4 following case number: LWDA-CM-843762-21.

5 44. The LWDA did not provide notice of its intention to investigate PLAINTIFF’s claims
6 on behalf of the State of California and the Aggrieved Employees after expiration of the 65-day
7 waiting time period, or at any time. DEFENDANTS also failed to cure within the time allotted
8 by PAGA. Consequently, PLAINTIFF has exhausted all administrative remedies and
9 PLAINTIFF’s right to file the instant lawsuit then duly accrued.

10 45. From one-year prior to PLAINTIFF’s filing of the required PAGA notice with the
11 Labor Workforce and Development Agency, and continuing through the present, as alleged herein,
12 DEFENDANTS violated Labor Code sections 201-202, 216, 221-223, 226, 226.7, 233-234,
13 245-248.5, 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5,
14 and all relevant sections of the applicable Wage Orders, as to PLAINTIFF and all Aggrieved
15 Employees employed by DEFENDANTS who worked as non-exempt employees. These
16 violations subject DEFENDANTS to civil penalties as set forth in the foregoing statutes as
17 well as other provisions of the Labor Code, including without limitation Labor Code sections
18 203, 210, 225.5, 226, 226.3, 256, 558, 558.1, 1174.5, 1197.1 and 2699.

19 46. PLAINTIFF is an “aggrieved employee” as that term is defined under the Labor Code
20 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable
21 statutory limitations period and suffered one or more of the Labor Code violations set forth
22 herein. Accordingly, PLAINTIFF seeks to recover on behalf of himself and all Aggrieved
23 Employees, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

24 47. PLAINTIFF has standing to bring a PAGA action on behalf of the defined
25 Aggrieved Employees, as he was employed by DEFENDANTS and affected by one or more
26 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
27 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
28

1 committed by the employer – regardless of whether PLAINTIFF experienced all violations
2 personally. *Id.* at 760-761.

3 **The “Aggrieved Employees”**

4 48. PLAINTIFF brings this action on behalf of PLAINTIFF and all similarly aggrieved
5 employees. The Aggrieved Employees shall be defined as follows: “All non-exempt workers
6 employed in California by DEFENDANTS at any time from one year and sixty-five days prior
7 to the filing of the initial complaint, through the present.”

8 **FIRST CAUSE OF ACTION**
9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
10 **LABOR CODE SECTIONS 2698, ET SEQ.**
11 **(AGAINST ALL DEFENDANTS)**

12 49. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 50. **Unpaid Minimum and Overtime Wages.** At all times relevant to this complaint, Cal.
14 Labor Code section 1194 and were in full force and effect and required that DEFENDANTS’
15 employees in California be paid for all hours worked, up to forty per week or eight per day, at a
16 regular time rate no less than the mandated minimum wage.

17 51. Effective January 1, 2016, the California minimum wage was \$10.00 per hour. Pursuant
18 to Cal. Labor Code section 1182.12, effective January 1, 2017, the California minimum wage
19 rate for employers with 26 employees increased to \$10.50 per hour. On January 1, 2018, this rate
20 was increased to \$11.00 per hour. On January 1, 2019, this rate was increased to \$12.00 per hour.
21 On January 1, 2020, this rate was increased again to \$13.00 per hour. Finally, on January 1, 2021,
22 this rate was increased again to \$14.00 per hour and is scheduled to increase to \$15.00 per hour
23 on January 1, 2022.

24 52. “Employer” means “any person who directly or indirectly, or through an agent or any
25 other person, employs or exercises control over the wages, hours, or working conditions of any
26 person.” Cal. Lab. Code section 1182.12(b)(3).

27 53. At all times relevant to this complaint, DEFENDANTS were employers who employed
28 26 or more employees.

54. Pursuant to Cal. Labor Code section 510 and all applicable IWC Wage Orders, section

1 3, employees in California must be paid overtime, equal to one and a half (1.5) times the
2 employee's regular rate of pay, for all hours worked in excess of forty (40) per week or eight (8)
3 per workday and must be paid double the regular hourly rate of pay for each hour worked beyond
4 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the
5 seventh consecutive day of work in a work week, unless they are exempt.

6 55. PLAINTIFF and all Aggrieved Employees were non-exempt employees who regularly
7 worked time for which they were not compensated, resulting in unpaid minimum wages as well
8 as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)
9 hours per week or more than eight (8) hours in a workday.

10 56. PLAINTIFF and other Aggrieved Employees were not paid for all hours worked
11 because of DEFENDANTS' auto-deduction policy and practice for meal periods, payment of
12 wages based on scheduled hours and not actual hours worked, and rounded time entries.
13 DEFENDANTS had and continue to have a continuous policy of clocking out PLAINTIFF and
14 other Aggrieved Employees for 30 minutes, even though PLAINTIFF and other Aggrieved
15 Employees were not relieved of all duties and employer control during said meal periods,
16 rendering the unpaid time compensable under California law. DEFENDANTS had and continue
17 to have a continuous policy of rounding PLAINTIFF and other Aggrieved Employees time
18 punches, including meal period time punches. On information and belief, this policy favored
19 DEFENDANTS more often than not, resulting in significant uncompensated time worked by
20 PLAINTIFF and other Aggrieved Employees. DEFENDANTS had and continue to have a
21 continuous policy of paying PLAINTIFF and other Aggrieved Employees for scheduled hours,
22 rather than the time actually reflected on PLAINTIFF and Aggrieved Employees' time records.
23 This regular performance of off-the-clock work resulted in the underpayment of minimum wages
24 PLAINTIFF and Aggrieved Employees, the underpayment of overtime wages for those
25 Aggrieved Employees who worked more than eight (8) hours per workday or more than forty
26 per week, as well as record-keeping violations.

27 57. **Meal Breaks.** Under Labor Code sections 226.7, 512, and the applicable IWC Wage
28 Orders, DEFENDANTS were required to provide PLAINTIFF and the Aggrieved Employees

1 with one thirty (30) minute meal break free from all duties for all shifts greater than five (5) but
2 less than ten (10) hours in length, and a second thirty (30) minute meal break free from all duties
3 for all shifts of ten (10) hours or more. The first meal period must be provided before the end of
4 the fifth hour of work and the second meal period before the end of the tenth hour of work.
5 Employers covered by the Wage Orders have an obligation to both (a) relieve their employees
6 for at least one meal period for shifts over five hours, and (b) to record having done so. If the
7 employer fails to properly record a compliant meal period, it is presumed no meal period was
8 provided. PLAINTIFF and the Aggrieved Employees were not provided timely, off-duty,
9 uninterrupted thirty-minute meal periods.

10 58. PLAINTIFF and other Aggrieved Employees consistently worked shifts of five and a
11 half hours or more. PLAINTIFF and other Aggrieved Employees would not receive a single
12 legally compliant thirty (30) minute first or second meal break. PLAINTIFF and similarly
13 Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute,
14 uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods,
15 and/or work through part or all their meal periods due to the nature and constraints of their job
16 duties and or commentary from supervisors pressuring them to take non-compliant breaks or skip
17 breaks completely. DEFENDANTS implemented a policy and practice of automatically
18 deducting thirty minutes to one hour per shift for these missed/improper meal periods, despite
19 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees
20 did not receive compliant meal periods. DEFENDANTS further implemented policies and
21 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
22 DEFENDANTS' control during unpaid meal breaks. Based on further information and belief,
23 DEFENDANTS illegally rounded the start and end times of employee meal periods resulting in
24 PLAINTIFF and other Aggrieved Employees not being paid for all time worked as well as late
25 or shortened meal periods. See *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58. Based on
26 information and belief, DEFENDANTS did not have a written meal break policy, nor did
27 DEFENDANTS have any sort of compliant policy in practice. Liability for the aggrieved
28 employees can be established by evidence that an employer adopted a uniform corporate break

1 policy that failed to give full effect to California law and the applicable Wage Order
2 requirements. The fact that employees may legally waive meal breaks does not affect this result.
3 *Brinker*, supra, 53 Cal.4th 1004. PLAINTIFF is further informed and believes and thereon alleges
4 that DEFENDANTS had actual or constructive knowledge that its time-rounding and auto-
5 deduction policies and practices resulted in the denial of meal periods owed PLAINTIFF and
6 other Aggrieved Employees, in violation of California's meal period laws. DEFENDANTS never
7 paid PLAINTIFF and other Aggrieved Employees an additional hour of wages at their respective
8 regular rates of pay for each workday a proper meal period was not provided. *Brinker*, supra, 53
9 Cal.4th 1004.

10 **59. Rest Breaks.** PLAINTIFF and other Aggrieved Employees did not receive compliant
11 net ten (10)-minute rest periods for every four (4) hours worked (or major fraction thereof), as
12 required by Labor Code 226.7 and the applicable IWC Wage Orders. PLAINTIFF and other
13 Aggrieved Employees regularly worked more than three-and-one-half (3½) hours without being
14 authorized or permitted to take a paid net ten (10) minute rest period. DEFENDANTS required
15 PLAINTIFF and other Aggrieved Employees to continuously work without authorizing or
16 providing paid rest periods. Any purported rest periods would be interrupted, cut short, on duty,
17 and or late due to the nature and constraints of the Aggrieved Employees' job duties and or
18 commentary from DEFENDANTS pressuring the Aggrieved Employees to skip rest breaks
19 completely/take non-compliant rest breaks. PLAINTIFF and other Aggrieved Employees were
20 unable to avail themselves of their rest breaks for various reasons, including but not limited to,
21 pressure to complete their work duties and or make additional deliveries and or make deliveries
22 according to a designated schedule such that rest breaks were only taken once jobs were
23 completed/as time permitted. DEFENDANTS had no policy in place nor instruction as to the
24 taking, timing, or duty-free nature of rest periods. PLAINTIFF and other Aggrieved Employees
25 were never paid a rest period premium for any missed/improper rest period.

26 **60. Unpaid Sick Leave Wages.** DEFENDANTS failed to provide PLAINTIFF and the
27 Aggrieved Employees paid sick days in accordance with Labor Code sections 245 through 248.5,
28 further failing to put them on notice of their paid sick leave rights—or thereby putting their

1 entitlement to sick leave in a Labor Code section 2810.5 notice. DEFENDANTS failed to
2 maintain accurate records documenting the hours worked and paid sick days accrued and used
3 by employees in violation of Labor Code section 247.5, permitting the presumption that
4 PLAINTIFF and the Aggrieved Employees were entitled to the maximum number of hours
5 accruable at the time of their respective separations of employment. By failing to correctly
6 account for the true hours worked by PLAINTIFF and the Aggrieved Employees (by virtue of
7 the auto-deduction and time rounding policies, and failure to pay for all hours worked, as
8 described herein) and or failing to provide paid sick leave at all, DEFENDANTS unlawfully
9 retained and continue to retain paid sick leave that should have been paid and was not.
10 Accordingly, DEFENDANTS have violated Labor Code sections 233 and 234 as to PLAINTIFF
11 and the Aggrieved Employees. DEFENDANTS either failed to pay sick leave at all or improperly
12 calculated the sick leave accrual and the rate of sick leave pay owed to PLAINTIFF and the
13 Aggrieved Employees by failing to base the accrued sick leave hours on the correct number of
14 hours worked due to the auto-deduction and time rounding policies, and failure to pay for all
15 hours worked, as described herein. DEFENDANTS failed to provide notice of the correct sick
16 leave amount balance available to PLAINTIFF and the Aggrieved Employees on their wage
17 statements or other written statement(s) of the sick leave balance(s).

18 **61. Inaccurate Wage Statements.** California Labor Code section 226 and the applicable
19 IWC Wage Order provides that, at the time of each payment of wages, the employer must provide
20 each employee with an itemized statement showing, *inter alia*, gross wages earned, total hours
21 worked, all deductions taken, net wages earned, the inclusive dates for which the employee is
22 being paid, the employee's name and last four digits of their social security number, the name
23 and address of the legal entity that it is the employer, and all applicable hourly rates in effect
24 during the pay period and all hours worked at each rate.

25 **62.** DEFENDANTS knew or had reason to know PLAINTIFF and the Aggrieved
26 Employees were working during their meal breaks and otherwise working off-the-clock and not
27 being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to provide
28 PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the wage

1 statements provided by DEFENDANTS do not accurately reflect, *inter alia*, the correct total
2 hours worked. Due to DEFENDANTS' unlawful practice for shortened/on-duty meal periods
3 and other mandated off-the-clock work as described herein, DEFENDANTS' wage statements
4 fail to reflect the true total hours worked by PLAINTIFF and the Aggrieved Employees worked,
5 as required under Labor Code section 226. As a result of DEFENDANTS' failure, PLAINTIFF
6 and the Aggrieved Employees suffered injury. Accordingly, DEFENDANTS have violated Cal.
7 Labor Code section 226.

8 **63. Record Keeping.** California Labor Code sections 226 and 1174 require employers to
9 keep "accurate and complete" payroll records showing, among other things, the hours worked
10 daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly
11 requires employers to keep time records showing, *inter alia*, when the employees begin and end
12 each work period and reflecting the true start and end times during which all owed meal periods
13 are provided each day. At all relevant times, DEFENDANTS have failed, and continue to fail, to
14 keep the required time records, as DEFENDANTS have failed to record the true start and end
15 times of PLAINTIFF's and the Aggrieved Employees' workdays and failed to record employee
16 meal periods as time worked. DEFENDANTS' failure to keep "accurate and complete" payroll
17 records for PLAINTIFF and the Aggrieved Employees violates Labor Code sections 1174, 1198-
18 99, and Section 7 of all applicable IWC Wage Orders. These violations subject DEFENDANTS
19 to civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699.
20 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
21 employee, results in a separate civil penalty.

22 **64. Untimely Wages at Termination.** Labor Code section 201 requires employers to pay
23 all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
24 Code section 202 extends those provisions to employees who resign. For all Aggrieved
25 Employees no longer employed by DEFENDANTS, DEFENDANTS have an ongoing failure to
26 pay such aggrieved employees all wages earned and unpaid at the time of discharge or
27 resignation, due to DEFENDANTS' failure to pay, *inter alia*, all owed minimum, overtime and
28 sick leave wages and at the properly accrued rates. These violations subject DEFENDANTS to

1 civil penalties under the Labor Code, including without limitation Labor Code sections 203, 256
2 and 2699. Each violation results in a separate civil penalty, for each Aggrieved Employee for
3 each pay period during which the statutory provisions were violated.

4 **65. Refusal to Pay Wages Due.** Labor Code section 216 declares unlawful an employer's
5 refusal to pay wages due and payable and/or an employer's denial of the validity of any claim to
6 wages due. DEFENDANTS have violated this section by, *inter-alia*, failing to pay PLAINTIFF
7 and the Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay
8 PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for each meal
9 or rest period not provided/that was invalid. These violations subject DEFENDANTS to civil
10 penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
11 each aggrieved employee, for each pay period during which the statute provisions were violated.

12 **66. Statutory Wages.** California Labor Code section 223 makes it unlawful for an
13 employer to secretly pay wages lower than required by statute while purporting to pay legal
14 wages. As described above, DEFENDANTS willfully and systematically denied the Aggrieved
15 Employees minimum and overtime wage compensation for all hours worked which resulted in
16 the payment of less than statutorily required wages to them. DEFENDANTS acted with the intent
17 to deprive them of statutory wages, including, but not limited to, overtime wages and minimum
18 wages, to which they were entitled to under California law.

19 **67. Unreimbursed Business Expenses.** Based on information and belief, DEFENDANTS
20 regularly failed to reimburse and indemnify Aggrieved Employees for business expenses,
21 including but not limited to, costs associated with being required to use their cell phones/other
22 mobile devices for work. Pursuant to Labor Code section 2802, Aggrieved Employees were
23 entitled to be reimbursed for all reasonable expenses associated with carrying out their job duties.
24 Aggrieved Employees were improperly required to pay for business expenses that are supposed
25 to be the responsibility of the employer, including but not limited to, cell phone/data plan charges.
26 Among other things, under California law, when employees must use their personal cellphones
27 for work-related purposes, the employer must reimburse them for a reasonable percentage of
28 their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th

1 1137, 1140. To show liability, an employee will only need to show that he or she was required
2 to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.*
3 1144-1145. California law also requires employers to reimburse employees for automobile
4 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the
5 wear and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.
6 PLAINTIFF and other Aggrieved Employees were improperly required to use their personal
7 cellphones to communicate and conduct work-related activities, such as: receive text messages
8 and calls from DEFENDANTS related to dispatching deliveries, communications from
9 DEFENDANTS regarding scheduling, disciplinary communications from DEFENDANTS, data
10 usage for mapping locations to pick up and drop off deliveries, and similar communications and
11 data usages. PLAINTIFF and other Aggrieved Employees were improperly required to use their
12 personal vehicles to pick up and deliver medications to customers and were not fully reimbursed
13 for mileage, gas, and wear and tear of their vehicles. While DEFENDANTS purported to
14 compensate for these vehicle-related expenses, the amount offered fell far below the Internal
15 Revenue Service (IRS) mandated per mile compensation for the relevant period.
16 DEFENDANTS' failure to provide the Aggrieved Employees with full reimbursement for all
17 reasonable expenses associated with carrying out their duties required that Aggrieved Employees
18 subsidize DEFENDANTS' business expenses in violation of Labor Code section 2802.

19 **68. Background Checks.** The Labor Code places certain procedural and substantive limits
20 on employers' ability to conduct employee background checks and on how employers can use
21 the information they obtain through those background checks. Labor Code section 1024.5 states
22 that employers, except for financial institutions, may order a credit check only if the individual
23 works (or is applying to work) in certain positions, and Labor Code section 432.7 prohibits an
24 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and
25 even then, certain limitations apply. Additionally, the ICRAA, and the FCRA mandate several
26 requirements prior to and following an employee background check, including but not limited
27 to, identifying an appropriate reason for the background check, a separate consent form with
28

1 required disclosures and certain formatting requirements, additional forms such as a summary of
2 rights, as well as proper notice of adverse actions taken, among other statutory requirements.

3 69. Based on information and belief, DEFENDANTS required PLAINTIFF and the
4 Aggrieved Employees to submit to an unlawful criminal and/or financial background check as a
5 condition of obtaining and/or holding employment in violation of Labor Code sections 1024.5
6 and/or 432.7. Based on further information and belief, DEFENDANTS also required
7 PLAINTIFF and the Aggrieved Employees to agree in writing to unlawful background checks
8 not in conformance with the requirements of ICRAA and/or FCRA. These violations subject
9 DEFENDANTS to civil penalties under the Labor Code, including without limitation Labor
10 Code sections 432.5, 432.7 and 2699. Each violation of each Labor Code section and Wage Order
11 provision, for each aggrieved employee, results in a separate civil penalty.

12 70. Under the provisions of PAGA and Labor Code sections 201-203, 221-223, 226, 226.7,
13 233-234, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1199,
14 2802, 2810.5 and all relevant sections of the applicable Wage Orders, as well as all interpretations
15 of these laws by California Courts and administrative bodies, as well as any other law that is
16 enforceable through PAGA, DEFENDANTS are liable for all statutorily-specified penalties
17 recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed
18 herein, or for default PAGA penalties under Labor Code section 2699(f) for any violation of a
19 Labor Code section without a specified civil penalty.

20 71. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
21 PLAINTIFF is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs,
22 all in an amount to be proved.

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PRAYER

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WHEREFORE, PLAINTIFF, prays for judgment against each Defendant, jointly and severally, as follows:

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1. For civil penalties according to proof;

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2. For reasonable attorney's fees and costs of suit; and

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3. For such other and further relief as the Court deems just and proper.

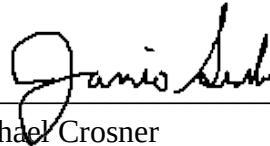
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Dated: November 22, 2021

CROSNER LEGAL, P.C.

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Michael Crosner

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Zach Crosner

14

Blake Jones

Jamie Serb

Attorneys for PLAINTIFF KELLY SAGONA

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DEMAND FOR JURY TRIAL

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PLAINTIFF demands a trial by jury on all claims so triable.

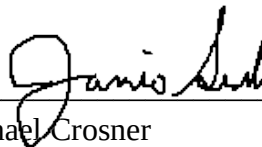
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Dated: November 22, 2021

CROSNER LEGAL, P.C.

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Michael Crosner

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Zach Crosner

23

Blake Jones

Jamie Serb

Attorneys for PLAINTIFF KELLY SAGONA

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EXHIBIT 1



CROSNER LEGAL

Public Interest Rights

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September 3, 2021

VIA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Corporation Service Company Which Will Do
Business in California as CSC-Lawyers
Incorporating Service
Agent for Service of Process for:
Barrett Business Services, Inc.
2710 Gateway Oaks Drive Suite 150N
Sacramento, CA 95833

The Corporation Trust Company,
Agent for Service of Process for:
ScriptDrop, Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

VIA U.S. CERTIFIED MAIL:

Mark Carson,
Agent for Service of Process for:
**Professional Courier & Logistics, Inc. dba
PCL Staff**
3027 Alhambra Dr. Suite D
Cameron Park, CA 95682

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency, Barrett Business

Services, Inc., ScriptDrop, Inc., Professional Courier & Logistics, Inc. dba PCL Staff

Date: September 3, 2021

Subject: *Kelly Sagona v. Barrett Business Services, Inc., et al.*

Introduction

This office represents COMPLAINANT, Kelly Sagona (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Barrett Business Services, Inc., ScriptDrop, Inc., Professional Courier & Logistics, Inc. dba PCL Staff (hereinafter, these entities and managing agents are collectively referred to as “EMPLOYER” unless otherwise specifically addressed). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all similarly situated non-exempt employees of EMPLOYER (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If EMPLOYER intends to cure the alleged violations within the statutory time period set forth in sections 2699 and 2699.3(a), the EMPLOYER shall provide notice including a

description of actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699.

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

General Information

Barrett Business Services, Inc., ScriptDrop, Inc., Professional Courier & Logistics, Inc. dba PCL Staff and its managing agents own, operate, or otherwise manage companies that deliver or sell pharmaceuticals to customers or supply labor to companies that deliver or sell pharmaceuticals. According to its website (www.bbsi.com), Barrett Business Services, Inc. provides payroll administration, workers' compensation programs, staffing, recruiting, and a variety of human resources services. According to its website (www.pclstaff.com), Professional Courier & Logistics, Inc. dba PCL Staff "provides dedicated 'in house' driver staffing for local and regional delivery services throughout California and Nevada." According to its website (www.scriptdrop.com), ScriptDrop, Inc. provides "prescription delivery solutions for pharmacies, health systems, telemedicine providers, and patients." While EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER from on or about November 2020 until on or about January 2021. COMPLAINANT and similarly AGGRIEVED EMPLOYEES worked as non-exempt pharmacy delivery drivers, delivering prescription medications to customers. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were paid an hourly rate plus \$0.28 per mile. COMPLAINANT and similarly AGGRIEVED EMPLOYEES used their own personal vehicles to make deliveries on behalf of EMPLOYERS and their own personal cellphones to communicate with EMPLOYER regarding work related duties. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were hourly paid, non-exempt employees.

COMPLAINANT was scheduled to work shifts Monday through Fridays from 12:00 p.m. to 6:00 p.m. COMPLAINANT picked up prescription medications from a CVS Pharmacy and a Ralphs Pharmacy located in Palos Verdes, California and delivered these prescription medications to customers in the Palos Verdes area. EMPLOYER automatically clocked COMPLAINANT out for one-hour unpaid meal breaks, but COMPLAINANT did not receive a legally compliant meal break. COMPLAINANT was not paid for all hours worked for EMPLOYER, due to EMPLOYER's unlawful policies and practices (i.e. payment according to scheduled hours only, failure to pay for time spent on duty and under EMPLOYER's control while clocked out for an

unpaid meal break, and EMPLOYER's auto-deduction and time rounding). COMPLAINANT was required to use her personal cellphone and vehicle for business related activities and was not reimbursed or not fully reimbursed by EMPLOYER for such use. COMPLAINANT was forced to pay increased prices for gas expended while making deliveries for EMPLOYER that EMPLOYER did not reimburse. COMPLAINANT did not receive accurate itemized wage statements from EMPLOYER. COMPLAINANT did not timely receive all wages due upon termination. COMPLAINANT was also required to submit to illegal background checks at the time of hiring. COMPLAINANT was told COMPLAINANT would be paid \$18.00 per hour, but was paid \$13.00 per hour instead, plus a mileage rate of \$0.28 cents per mile.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay employees at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to provide COMPLAINANT and similarly AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and similarly AGGRIEVED EMPLOYEES an additional hour of premium pay for missed/improper meal and/or rest periods; (5) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and similarly AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (6) failed and continues to fail to place COMPLAINANT and similarly AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (7) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (8) made unlawful deductions from COMPLAINANT and similarly AGGRIEVED EMPLOYEES' paychecks; (9) failed and continues to fail to timely pay wages to COMPLAINANT and similarly AGGRIEVED EMPLOYEES during employment and upon separation of employment; (10) failed and continues to fail to reimburse COMPLAINANT and similarly AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (11) conducts illegal background checks as a condition of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' hire or maintaining their employment; and (12) requires COMPLAINANT and similarly AGGRIEVED EMPLOYEES to impermissibly disclose arrests on their employment applications and sign off on same. Further descriptions of the above-mentioned violations and others are explained below.

The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of Complainant. Specifically, ScriptDrop, Inc. disciplined COMPLAINANT when COMPLAINANT mistakenly delivered a medication to the wrong customer. ScriptDrop, Inc. claimed it owned and was responsible for the entire operation for which COMPLAINANT was hired to perform. Barrett Business Services, Inc. and Professional Courier & Logistics, Inc. hired COMPLAINANT, set COMPLAINANT's schedule, provided COMPLAINANT with delivery routes, paid COMPLAINANT, and terminated COMPLAINANT.

By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated COMPLAINANT and other AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. The applicable IWC Wage Order, section 7, similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER has failed, and continues to fail, to keep accurate and complete payroll records as required by law.

EMPLOYER has failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and similarly AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s automatic meal break deductions and time rounding policies and practices, described below.

EMPLOYER further failed, and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and similarly AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT and similarly AGGRIEVED EMPLOYEES’ meal periods and shifts.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. *Cal. Lab. Code* § 512 (and all applicable IWC Wage Orders), §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee’s total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee’s total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, §7(A)(3) (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided”).

Employers must pay employees an additional hour of wages at the employees’ regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to provide an employee a meal period in accordance with the employee’s regular rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of five and a half hours or more.

COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive a single legally compliant thirty (30) minute first or second meal break. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors pressuring them to take non-compliant breaks or skip breaks completely.

EMPLOYER implemented a policy and practice of automatically deducting thirty minutes to one hour per shift for these missed/improper meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES did not receive compliant meal periods.

EMPLOYER further implemented policies and practices that failed to relieve COMPLAINANT and other AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control during unpaid meal breaks.

Based on further information and belief, EMPLOYER illegally rounded the start and end times of employee meal periods resulting in COMPLAINANT and other AGGRIEVED EMPLOYEES not being paid for all time worked as well as late or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that

failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of meal periods owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER never paid COMPLAINANT and other AGGRIEVED EMPLOYEES an additional hour of wages at their respective regular rates of pay for each workday a proper meal period was not provided. *Brinker, supra*, 53 Cal.4th 1004.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, §11(A) and (C). These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* all applicable IWC Wage Orders, §12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other AGGRIEVED EMPLOYEES with appropriate rest periods at a rate of every four (4) hours worked or major fraction thereof.

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 7-2001, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law.

Any purported rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties and or commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant rest breaks.

COMPLAINANT and other AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once jobs were completed/as time permitted.

EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. COMPLAINANT and other AGGRIEVED EMPLOYEES were never paid a rest period premium for any missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 7-2001, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code section 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” *Cal. Lab. Code* § 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); all applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER'S automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

COMPLAINANT and other AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their unpaid meal periods, resulting in significant unpaid wages for time spent working for EMPLOYER.

EMPLOYER implemented a policy and practice of automatically deducting thirty minutes to one-hour per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES were working through part or all these meal periods.

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods resulting in COMPLAINANT and other AGGRIEVED EMPLOYEES not being paid for all time worked.

EMPLOYER implemented a policy and practice of paying COMPLAINANT and AGGRIEVED EMPLOYEES for scheduled work hours only and not the hours actually worked by COMPLAINANT and AGGRIEVED EMPLOYEES, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES worked before and beyond scheduled hours.

Based on information and belief, EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices and failure to provide off-duty meal periods resulted in the underpayment of minimum wages owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); all applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. *Cal. Lab. Code* § 510; all applicable IWC Wage Order, §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by COMPLAINANT and other AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies, paying according to schedule and not actual time worked, and practices for meal periods described herein resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages for COMPLAINANT and those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See Cal. Lab. Code* § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the employee enforcing the rights granted by this section."

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145.

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to use their personal cellphones to communicate and conduct work-related activities, such as: receive text messages and calls from EMPLOYER related to dispatching deliveries, communications from EMPLOYER regarding scheduling, disciplinary communications from EMPLOYER, data usage for mapping locations to pick up and drop off deliveries, and similar communications and data usages.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to use their personal vehicles to pick up and deliver medications to customers and were not fully reimbursed for mileage, gas, and wear and tear of their vehicles.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cellphone/data plan charges and costs associated with having to use their personal vehicles on the job (including mileage, gas, and wear and tear on the vehicle).

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and other AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to use of COMPLAINANT's cellphone and data usage, and use of personal vehicle when picking up and delivering prescriptions.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and other AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and other AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers.

While EMPLOYER purported to compensate for these vehicle-related expenses, the amount offered fell far below the Internal Revenue Service (IRS) mandated per mile compensation for the relevant period.

EMPLOYERS' failure to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and other AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

This conduct results in violations of Labor Code section 2802 and subject EMPLOYER to civil penalties under Labor Code section 2699. Each violation of each Labor Code section and Wage

Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Refusal to Make Payment: Labor Code § 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code § 216 by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES an additional hour of pay for each meal or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code § 225.5⁷. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. *Cal. Lab. Code* § 226.

EMPLOYER failed to furnish accurate itemized wage statements in writing to COMPLAINANT and all AGGRIEVED EMPLOYEES.

Alternatively, EMPLOYER's wage statements that it provided to COMPLAINANT and all AGGRIEVED EMPLOYEES failed to indicate the "total hours worked" by the COMPLAINANT and all AGGRIEVED EMPLOYEES (by virtue of the off-the-clock work/automatic deduction for

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); applicable IWC Wage Order, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

meal periods/requirement that employees input their hours based on their set work schedule rather than actual hours worked, all described in greater detail *supra*).

In addition, because of the violations detailed above, including not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

As a result, the wage statements provided to COMPLAINANT and all AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code § 226. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁸

Standard Conditions of Labor Violations: Together, Labor Code §§ 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to Complainant and all aggrieved employees, due to EMPLOYER's failure to account for true actual hours worked (by virtue of the auto-deduction and time rounding policies, and failure to pay for all hours worked, as described herein) and or failure to provide paid sick leave at all.

EMPLOYER further failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code § 2810.5 notice.

In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employee throughout the relevant time period.

Throughout the relevant time period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and all AGGRIEVED EMPLOYEES, and thus affecting their intelligent exercise of their paid sick leave.

But for this failure, COMPLAINANT and all AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

This illegal retention of paid sick leave is unlawful and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all AGGRIEVED EMPLOYEES.

In violation of Labor Code § 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT all AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article at the time of his termination.

EMPLOYER further failed and continues to fail to comply with Labor Code § 246, by providing COMPLAINANT all AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid and wasn't as a result of its failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other similarly AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code §§ 233 and 234, which incorporates the paid sick leave requirements.

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other AGGRIEVED EMPLOYEES minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all AGGRIEVED EMPLOYEES are

entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Background Check Violations: The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code Section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Labor Code § 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code §1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. § 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER required COMPLAINANT and all AGGRIEVED EMPLOYEES to submit to an unlawful criminal and/or financial background check as a condition of obtaining and/or holding employment in violation of Labor Code § 1024.5 and 432.7.

EMPLOYER also required COMPLAINANT and other AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code §1786, et seq. and 15 U.S.C. § 1681, et seq., and thus was an unlawful background check.

EMPLOYER knew that requiring COMPLAINANT and AGGRIEVED EMPLOYEES to agree to these criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By having COMPLAINANT and other AGGRIEVED EMPLOYEES sign off on the illegal background checks, Employer also violated Labor Code § 432.5 (stating that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.").

Furthermore, in violation of California law, EMPLOYER asked about arrests not resulting in convictions on its employment application.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles*,

LLC, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

EMPLOYER failed to timely pay COMPLAINANT and other AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation, in violation of California law.

Upon separation of employment, COMPLAINANT and other AGGRIEVED EMPLOYEES' final paychecks were not timely provided, and COMPLAINANT and other AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all remuneration owed as they were devoid of, including but not limited to, all owed minimum and overtime wages and sick pay at the appropriate rates.

EMPLOYER has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

These violations subject EMPLOYER to civil penalties under Labor Code section 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁹

Conclusion

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code §§ 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all other AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC