

Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Roxanna Tabatabaepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Daisy Espinoza

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
12/14/2021 4:31 PM
Alex Calvo, Clerk
By: Declan Salsedo, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

DAISY ESPINOZA, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

ENCOMPASS COMMUNITY SERVICES,
a California corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21CV02110

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Daisy Espinoza, individually and on behalf of all other members of the
2 general public similarly situated and as an aggrieved employee and on behalf of all other
3 aggrieved employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court because Defendants filed a Statement of Information form with the California Secretary of State designating a principal place of business in Santa Cruz, County of Santa Cruz, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

THE PARTIES

4. Plaintiff Daisy Espinoza is a resident of Santa Cruz, in Santa Cruz County, California. Defendants employed Plaintiff as an hourly paid, non-exempt On-Call Counselor from approximately March 2019 to June 2021. Plaintiff worked for Defendants at their Tyler House location in Watsonville, California. During her employment, Plaintiff typically worked eight (8) to ten (10) hours per day, and two (2) days per week. Plaintiff's primary job duties included, without limitation, supervising and attending to clients/residents, cooking and preparing food, accompanying residents to outings and medical appointments, and completing incident reports.

5. ENCOMPASS COMMUNITY SERVICES was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

1 were the partners, agents, owners, or managers of ENCOMPASS COMMUNITY SERVICES,
2 at all relevant times.

3 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, ENCOMPASS
5 COMMUNITY SERVICES and/or DOES 1 through 10 (collectively, “Defendants” or
6 “ENCOMPASS”) each acting as the agent, employee, alter ego, and/or joint venturer of, or
7 working in concert with, each of the other co-Defendants and was acting within the course and
8 scope of such agency, employment, joint venture, or concerted activity with legal authority to
9 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
10 represent, the official policy of Defendants.

11 9. At all relevant times, Defendants, and each of them, ratified each and every act
12 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
13 and abetted the acts and omissions of each and all the other Defendants in proximately causing
14 the damages herein alleged.

15 10. Plaintiff is informed and believes, and thereon alleges, that each of said
16 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
17 omissions, occurrences, and transactions alleged herein.

18 **GENERAL ALLEGATIONS**

19 11. Defendants are a provider of community programs offering behavioral health,
20 family and social well-being, early childhood education, and housing services in Santa Cruz
21 County, California. Upon information and belief, Defendants maintain a single, centralized
22 Human Resources (“HR”) department at their company headquarters in Santa Cruz,
23 California, which is responsible for the recruiting and hiring of new employees, and
24 communicating and implementing Defendants’ company-wide policies, including timekeeping
25 policies and meal and rest period policies, to employees throughout California.

26 12. In particular, Plaintiff and class members, on information and belief, received
27 the same standardized documents and/or written policies. Upon information and belief, the
28 usage of standardized documents and/or written policies, including new-hire documents,

1 indicate that Defendants dictated policies at the corporate level and implemented them
2 company-wide, regardless of their employees' assigned locations or positions. Upon
3 information and belief, Defendants set forth uniform policies and procedures in several
4 documents provided at an employee's time of hire.

5 13. Upon information and belief, Defendants maintain a centralized Payroll
6 department at their company headquarters in Santa Cruz, California, which processes payroll
7 for all non-exempt, hourly paid employees working for Defendants at their various locations
8 and jobsites in California, including Plaintiff and class members. Based upon information and
9 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
10 employees in California, irrespective of their work locations. Upon information and belief,
11 Defendants process payroll for departing employees in the same manner throughout the State
12 of California, regardless of the manner in which each employee's employment ends.

13 14. Defendants continue to employ non-exempt or hourly paid employees in
14 California.

15 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
17 and advisors knowledgeable about California labor and wage law, employment and personnel
18 practices, and about the requirements of California law.

19 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
20 members were not paid for all hours worked because all hours worked were not recorded.

21 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive certain wages for
23 overtime compensation and that they were not receiving certain wages for overtime
24 compensation.

25 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive at least minimum
27 wages for compensation and that they were not receiving at least minimum wages for work
28 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff

1 and class members were not paid at least minimum wages for work done off-the-clock.

2 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to meal periods in
4 accordance with the California Labor Code and applicable IWC Wage Order or payment of
5 one (1) additional hour of pay at their regular rates of pay when they were not provided with
6 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
7 were not provided with all meal periods or payment of one (1) additional hour of pay at their
8 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
9 period.

10 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to rest periods in
12 accordance with the California Labor Code and applicable IWC Wage Order or payment of
13 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
14 permitted to take a compliant rest period. In violation of the Labor Code, Plaintiff and class
15 members were not authorized and permitted to take compliant rest periods, nor did Defendants
16 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
17 regular rates of pay when they were not authorized and permitted to take a compliant rest
18 period.

19 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive complete and
21 accurate wage statements in accordance with California law. In violation of the California
22 Labor Code, Plaintiff and class members were not provided complete and accurate wage
23 statements.

24 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that they had a duty to maintain accurate and complete payroll records in
26 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
27 and intentionally failed to do so.

28 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to timely payment of all
2 wages earned upon termination of employment. In violation of the California Labor Code,
3 Plaintiff and class members did not receive payment of all wages due, including, but not
4 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
5 time pay, within permissible time periods.

6 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to timely payment of wages
8 during their employment. In violation of the California Labor Code, Plaintiff and class
9 members did not receive payment of all wages, including, but not limited to, overtime wages,
10 minimum wages, meal and rest period premiums, and/or reporting time pay, within
11 permissible time periods.

12 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
14 and expenses Plaintiff and/or class members incurred obtaining mandatory physical
15 examinations and/or drug tests, but failed to do so.

16 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive all reporting time
18 pay when Defendants required Plaintiff and class members to report to work but were put to
19 work for less than half of their regular scheduled shift. In violation of the California Labor
20 Code and applicable IWC Wage Order, Plaintiff and class members were not paid all
21 reporting time pay.

22 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive full
24 reimbursement for all business-related expenses and costs they incurred during the course and
25 scope of their employment and that they did not receive full reimbursement of applicable
26 business-related expenses and costs incurred.

27 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that they had a duty to compensate

1 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
2 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
3 falsely represented to Plaintiff and class members that they were properly denied wages, all in
4 order to increase Defendants' profits.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 29. At all times herein set forth, PAGA provides that any provision of law under
7 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
8 assessed and collected by the LWDA for violations of the California Labor Code and
9 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
10 civil action brought on behalf of themselves and other current or former employees pursuant
11 to procedures outlined in California Labor Code section 2699.3.

12 30. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
13 person who was employed by the alleged violator and against whom one or more of the
14 alleged violations was committed."

15 31. Plaintiff and other current and former employees of Defendants are "aggrieved
16 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
17 or former employees and one or more of the alleged violations were committed against them.

18 32. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
19 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
20 following requirements have been met:

21 (a) The aggrieved employee or representative shall give written notice by
22 online filing with the LWDA and by certified mail to the employer of
23 the specific provisions of the California Labor Code alleged to have
24 been violated, including the facts and theories to support the alleged
25 violation.

26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(a) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The LWDA shall notify the employer and the aggrieved employee or
2 representative by certified mail that it does not intend to investigate the
3 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
4 the postmark date of the aggrieved employee’s notice. Upon receipt of
5 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
6 (65) calendar days of the postmark date of the aggrieved employee’s
7 notice, the aggrieved employee may commence a civil action pursuant
8 to California Labor Code section 2699 to recover civil penalties.

9 33. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
10 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
11 provision other than those listed in Section 2699.5 after the following requirements have been
12 met:

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated (other than those listed in Section 2699.5), including the
17 facts and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(c) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33)
22 calendar days of the postmark date of the notice sent by the aggrieved
23 employee or representative. The employer shall give written notice
24 within that period of time by certified mail to the aggrieved employee or
25 representative and by online filing with the LWDA if the alleged
26 violation is cured, including a description of actions taken, and no civil
27 action pursuant to Section 2699 may commence. If the alleged violation
28 is not cured within the 33-day period, the aggrieved employee may

1 commence a civil action pursuant to Section 2699.

2 34. On September 7, 2021, Plaintiff provided written notice by online filing to the
3 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff’s written
6 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
7 LWDA PAGA Administrator confirmed receipt of Plaintiff’s written notice and assigned
8 Plaintiff PAGA Case Number LWDA-CM-843744-21. A true and correct copy of Plaintiff’s
9 written notice to the LWDA and Defendants is attached hereto as “Exhibit 1.”

10 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff
11 sent the notice described above to the LWDA, and the LWDA has not responded that it
12 intends to investigate Plaintiff’s claims and Defendants have not cured the violations.

13 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
15 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a),
16 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

17 37. Labor Code section 558(a) provides “[a]ny employer or other person acting on
18 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
19 provision regulating hours and days of work in any order of the Industrial Welfare
20 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
21 dollars (\$50) for each underpaid employee for each pay period for which the employee was
22 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
23 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
24 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
25 to any other civil or criminal penalty provided by law.”

26 38. Defendants, at all times relevant to this complaint, were employers or persons
27 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
28 rights by violating various sections of the California Labor Code as set forth above.

39. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

41. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

42. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

43. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

44. Members of the Class and Subclass are referred to herein as "class members."

45. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

46. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- 1 (a) Whether Defendants required Plaintiff and class members to work over
2 eight (8) hours per day, over twelve (12) hours per day, or over forty
3 (40) hours per week and failed to pay all legally required overtime
4 compensation to Plaintiff and class members;
- 5 (b) Whether Defendants failed to pay Plaintiff and class members at least
6 minimum wages for all hours worked;
- 7 (c) Whether Defendants failed to provide Plaintiff and class members with
8 meal periods;
- 9 (d) Whether Defendants failed to authorize and permit Plaintiff and class
10 members to take rest periods;
- 11 (e) Whether Defendants provided Plaintiff and class members with
12 complete and accurate wage statements as required by California Labor
13 Code section 226(a);
- 14 (f) Whether Defendants maintained accurate payroll records as required by
15 California Labor Code section 1174(d);
- 16 (g) Whether Defendants failed to pay earned overtime wages, minimum
17 wages, meal and rest period premiums, and/or reporting time pay due to
18 Plaintiff and class members upon their discharge;
- 19 (h) Whether Defendants failed timely to pay overtime wages, minimum
20 wages, meal and rest period premiums, and/or reporting time pay due to
21 Plaintiff and class members during their employment;
- 22 (i) Whether Defendants failed to pay Plaintiff and/or class members for the
23 costs of mandatory physical examinations and/or drug testing;
- 24 (j) Whether Defendants required Plaintiff and class members to report to
25 work, but failed to provide them with work or provided them with less
26 than half their scheduled day's work, without properly compensating
27 them as required by California Code of Regulations, Title 8, section
28 11040, subsection 5;

- 1 (k) Whether Defendants failed to reimburse Plaintiff and class members for
2 necessary and required business-related expenditures and/or losses
3 incurred by them in the scope of their employment;
- 4 (l) Whether Defendants engaged in unlawful and unfair business practices
5 in violation of California Business & Professions Code sections 17200,
6 *et seq.*; and
- 7 (m) The appropriate amount of damages, restitution, or monetary penalties
8 resulting from Defendants' violations of California law.

9 47. There is a well-defined community of interest in the litigation and the class
10 members are readily ascertainable:

- 11 (a) Numerosity: The class members are so numerous that joinder of all
12 members would be unfeasible and impractical. The membership of the
13 entire class is unknown to Plaintiff at this time; however, the class is
14 estimated to be greater than one hundred (100) individuals and the
15 identity of such membership is readily ascertainable by inspection of
16 Defendants' employment records.
- 17 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
18 protect the interests of each class member with whom she has a well-
19 defined community of interest, and Plaintiff's claims (or defenses, if
20 any) are typical of all class members as demonstrated herein.
- 21 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
22 protect the interests of each class member with whom she has a well-
23 defined community of interest and typicality of claims, as demonstrated
24 herein. Plaintiff acknowledges that she has an obligation to make
25 known to the Court any relationship, conflicts or differences with any
26 class member. Plaintiff's attorneys, the proposed class counsel, are
27 versed in the rules governing class action discovery, certification, and
28 settlement. Plaintiff has incurred, and throughout the duration of this

1 action, will continue to incur costs and attorneys' fees that have been,
2 are, and will be necessarily expended for the prosecution of this action
3 for the substantial benefit of each class member.

4 (d) Superiority: The nature of this action makes the use of class action
5 adjudication superior to other methods. A class action will achieve
6 economies of time, effort, and expense as compared with separate
7 lawsuits, and will avoid inconsistent outcomes because the same issues
8 can be adjudicated in the same manner and at the same time for the
9 entire class.

10 (e) Public Policy Considerations: Employers in the State of California
11 violate employment and labor laws every day. Current employees are
12 often afraid to assert their rights out of fear of direct or indirect
13 retaliation. Former employees are fearful of bringing actions because
14 they believe their former employers might damage their future
15 endeavors through negative references and/or other means. Class
16 actions provide the class members who are not named in the complaint
17 with a type of anonymity that allows for the vindication of their rights
18 while simultaneously protecting their privacy.

19 **FIRST CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

21 **(Against all Defendants)**

22 48. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 49. Labor Code section 1198 makes it illegal to employ an employee under
25 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
26 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
27 shall be the . . . standard conditions of labor for employees. The employment of any employee
28 . . . under conditions of labor prohibited by the order is unlawful.”

1 50. California Labor Code section 1198 and the applicable IWC Wage Order
2 provide that it is unlawful to employ persons without compensating them at a rate of pay
3 either time-and-one-half or two-times that person's regular rate of pay, depending on the
4 number of hours worked by the person on a daily or weekly basis.

5 51. Specifically, the applicable IWC Wage Order provides that Defendants are and
6 were required to pay Plaintiff and class members working more than eight (8) hours in a day
7 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
8 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
9 workweek.

10 52. The applicable IWC Wage Order further provides that Defendants are and were
11 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
12 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
13 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
14 employee, including nondiscretionary bonuses and incentive pay.

15 53. California Labor Code section 510 codifies the right to overtime compensation
16 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
17 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
18 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
19 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
20 in a day on the seventh (7th) day of work.

21 54. During the relevant time period, Defendants willfully failed to pay all overtime
22 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
23 class members were not paid overtime premiums for all of the hours they worked in excess of
24 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
25 hours in a week, because all hours worked were not recorded.

26 55. First, upon information and belief, Defendants' timekeeping system did not
27 always register and calculate overtime hours and wages correctly when Plaintiff and class
28 members inputted their hours. For example, Defendants' timekeeping records show that

1 Plaintiff input more than eight (8) hours as “Regular” time, but was not paid overtime wages
2 for the hours exceeding eight (8) hours per day. Specifically, during the pay period of January
3 16 through January 31, 2020, Plaintiff logged two 9-hour shifts on January 19 and January 20,
4 but her pay records for that pay period indicate she was paid only straight time and not
5 overtime wages. Thus, on information and belief, Plaintiff was not paid at an overtime rate
6 for hours worked over eight (8).

7 56. Second, during the relevant period, Defendants had a company-wide policy
8 and/or practice of rounding or underreporting employee clock-in and clock-out times in their
9 timekeeping system to the nearest quarter (0.25) of an hour. Defendants’ rounding policy
10 resulted in the failure to compensate Plaintiff and class members fully for all hours worked,
11 causing Plaintiff and class members to not be paid overtime wages for all of the overtime
12 hours they actually worked. Defendants’ timekeeping practices are, and continue to be, unfair
13 and have, over time, resulted in the underpayment of wages to Plaintiff and class members.
14 To the extent Defendants’ rounding policy has taken away time worked that was eligible for
15 overtime, Plaintiff and class members were denied overtime pay for all hours worked.

16 57. Third, Defendants had, and continue to have, a company-wide policy and/or
17 practice of requiring Plaintiff and class members to complete work-related tasks while off-the-
18 clock, such as completing online training modules from home and responding to
19 communications from management on their personal cellular phones to discuss work-related
20 matters outside of their shifts, but did not compensate them for all of this time. For example,
21 Plaintiff was instructed by her supervisor to complete online medical privacy training on her
22 day off, which took over one (1) hour to complete. As another example, Plaintiff was required
23 to answer calls from her supervisors twice per week and spend 10-30 minutes discussing
24 incidents that had occurred during her shift. However, Defendants did not compensate
25 Plaintiff and class members for this time spent working off-the-clock.

26 58. Defendants knew or should have known that as a result of these company-wide
27 practices and/or policies, Plaintiff and class members were performing their assigned duties
28 off-the-clock before and after their shifts, and were suffered or permitted to perform work for

1 which they were not paid. Because Plaintiff and class members worked shifts of eight (8)
2 hours a day or more or forty (40) hours a week or more, some of this off-the-clock work
3 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
4 overtime wages for all of the overtime hours they actually worked.

5 59. Defendants' failure to pay Plaintiff and class members the balance of overtime
6 compensation as required by California law, violates the provisions of California Labor Code
7 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
8 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
9 and attorneys' fees.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 12 **Minimum Wages** 13 **(Against all Defendants)**

14 60. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
17 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
18 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
19 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the
20 time during which an employee is subject to the control of an employer, and includes all the
21 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
22 Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

23 62. As stated above, Defendants had a company-wide policy and/or practice of
24 rounding or underreporting Plaintiff's and class members' hourly clock-in and clock-out times
25 in their timekeeping system to the nearest quarter hour, resulting in the failure to compensate
26 them for all hours worked. In addition, as set forth above, Defendants required Plaintiff and
27 class members to respond to communications from Defendants' management and complete
28 online trainings while off-the-clock, but did not compensate them for this time.

63. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

64. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

66. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

67. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

68. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an

1 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
2 hours worked is no more than twelve (12) hours, the second meal period may be waived by
3 mutual consent of the employer and the employee only if the first meal period was not waived.

4 69. Under California law, an employer cannot evade meal break requirements via
5 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
6 *Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

7 70. First, Defendants have systematically, and on a company-wide basis,
8 understaffed their locations and failed to provide adequate meal period coverage to permit
9 employees to take compliant meal periods. Because there was no one available to relieve
10 Plaintiff and class members needing meal period coverage, Defendants required Plaintiff and
11 class members to remain on-duty at all times. As a result, Plaintiff and class members always
12 had to remain available to attend to clients and address any incidents as they arose, including
13 during meal periods.

14 71. Second, Defendants, on a company-wide basis, also systematically discouraged
15 and impeded Plaintiff and class members from taking meal periods by failing to schedule meal
16 periods at all, even though they are aware and know that employees are entitled to such meal
17 periods. For example, Defendants typically scheduled Plaintiffs' shifts to begin at 7:00 a.m.
18 and end at 3:00 p.m., without accounting for her 30-minute meal periods. Instead, Defendants
19 required that Plaintiff and class members sign "on duty" meal period agreements upon threat
20 of termination. Specifically, Defendants' "Agreement for On-Duty Meal Period" provides,
21 "Should an employee revoke this agreement, their employment may be terminated, depending
22 on the needs of the program." As a result of these policies, Plaintiff and class members were
23 not provided timely, uninterrupted 30-minute meal periods during their shifts in which they
24 were entitled to receive a meal period.

25 72. Moreover, to the extent Defendants required their employees to sign written
26 "on-duty" meal period agreements, such agreements were invalid under California law.
27 Defendants' "on-duty" meal period policy results from the company's own staffing and
28 business decisions, not because the nature of the work required on-duty meal periods. There

1 were multiple employees employed by Defendants at Plaintiff's and class members' locations
2 and Defendant's locations are not in remote areas. Defendants could have provided rover
3 break coverage for Plaintiff and class members or staffed more employees at their facilities,
4 but chose not to do so. Further, the work of Defendants' employees is not of the kind that
5 could be said to meet the "nature of the work" exception. Plaintiff and class members were
6 responsible for providing counseling, preparing reports, and supervising clients/residents.
7 None of these tasks is akin to the kind that the California Division of Labor Standards
8 Enforcement ("DLSE") has found warrant an "on-duty" meal period, such as transporting
9 hazardous materials via vehicles that must be monitored at all times pursuant to federal
10 regulation. Therefore, Defendants' use of an "on-duty" meal period is improper and unlawful.
11 Because of Defendants' company-wide written "on-duty" meal period policy, Plaintiff and
12 class members did not receive all required off-duty meal periods and did not receive premium
13 pay for missed, late, or interrupted meal periods.

14 73. Defendants' practices and policies prevented Plaintiff and class members from
15 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
16 members were forced to work in excess of five (5) hours before taking a meal period, had
17 their meal periods interrupted, and/or had to forgo their meal periods altogether. For example,
18 because Plaintiff was required to remain on-duty during her meal periods, she had to forego
19 meal periods altogether.

20 74. Additionally, Defendants did not schedule second meal periods and had no
21 policy for permitting Plaintiff and class members to take second 30-minute meal periods on
22 days that they worked in excess of ten (10) hours in one day. For example, Plaintiff worked
23 shifts in excess of ten (10) hours per day several times during her employment, but was also
24 required to forego her second meal periods to remain on-duty. Plaintiff and class members
25 did not sign valid meal period waivers on days that they were entitled to meal periods and
26 were not relieved of all duties.

27 75. At all times herein mentioned, Defendants knew or should have known that, as
28 a result of these policies, Plaintiff and class members were prevented from being relieved of

1 all duties and required to perform some of their assigned duties during meal periods.
2 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
3 members all meal period premiums when meal periods were late, missed, shortened, or
4 interrupted.

5 76. Furthermore, Defendants engaged in a company-wide practice and/or policy of
6 not paying all meal period premiums owed when compliant meal periods were not provided.
7 Because of this practice and/or policy, Plaintiff and class members have not received all
8 premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to
9 provide Plaintiff and class members compliant meal periods in violation of California Labor
10 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

11 77. Defendants' conduct violates the applicable IWC Wage Order, and California
12 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
13 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
14 rate of compensation for each work day that the meal period was not provided.

15 **FOURTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 17 **(Against all Defendants)**

18 78. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 79. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
22 members' employment by Defendants.

23 80. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof" unless the total daily work time is less than three and one-half
28 (3 ½) hours.

1 81. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to authorize and permit rest
4 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
5 employer must “relinquish any control over how employees spend their break time, and
6 relieve their employees of all duties—including the obligation that an employee remain on
7 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
8 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
9 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
10 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
11 that a required rest period was not authorized and permitted.

12 82. During the relevant time period, Defendants regularly failed to authorize and
13 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
14 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
15 scheduling policies and/or practices, or lack thereof, prevented Plaintiff and class members
16 from being relieved of all duties in order to take compliant rest periods. Defendants had no
17 policy for scheduling rest periods for employees and no policy for assigning employees
18 coverage to take rest a rest period, which further impeded and prevented Plaintiff and class
19 members from taking compliant rest periods.

20 83. Defendants also maintained and implemented a company-wide on-premises rest
21 period policy, which mandated that Plaintiff and class members remain on-duty and on
22 Defendants’ premises during their rest periods. Because Plaintiff and class members were
23 required to continue working and restricted from leaving Defendants’ premises during rest
24 periods, they were denied the ability to use their rest periods freely for their own purposes.
25 For instance, Plaintiff was required to remain on-duty during her rest periods to provide
26 constant care and supervision to Defendants’ clients/residents and was unable to take brief
27 walks outside to get fresh air. Thus, Defendants effectively maintained control over Plaintiff
28 and class members during rest periods.

84. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, because Plaintiff was required to remain on-duty during her rest periods, she had to forego rest periods altogether.

85. Defendants have also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them all rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

86. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records
(Against all Defendants)

87. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

88. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

89. At all relevant times, Defendants have knowingly and intentionally provided

1 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
2 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
3 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
4 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
5 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
6 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

7 90. Because Defendants did not record the time Plaintiff and Subclass members
8 spent working off-the-clock and improperly rounded their clock-in and clock-out times,
9 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
10 and Subclass members in compliance with section 226(a)(1) and section 226(a)(5),
11 respectively. For the same reason, Defendants failed to accurately list the total number of
12 hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed
13 to list the applicable hourly rates of pay in effect during the pay period and the corresponding
14 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

15 91. The wage statement deficiencies also include, among other things, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
17 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
18 for which employees were paid; failing to list the name of the employee and only the last four
19 digits of his or her social security number or an employee identification number other than a
20 social security number; failing to list the name and address of the legal entity that is the
21 employer; and/or failing to state all hours worked as a result of not recording or stating the
22 hours they worked off-the-clock.

23 92. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
2 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
3 members showing the daily hours they worked and the wages paid thereto as a result of failing
4 to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and
5 Subclass members’ total hours worked.

6 93. California Labor Code section 1198 provides that the maximum hours of work
7 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
8 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
9 employment of any employees for longer hours than those fixed by the order or under
10 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
11 Wage Order, employers are required to keep accurate time records showing when the
12 employee begins and ends each work period and meal period. At all relevant times, as stated,
13 Defendants engaged in company-wide practices and/or policies of failing to record actual
14 hours worked, and thereby failed, on a company-wide basis, to keep accurate records of work
15 period and meal period start and stop times for Plaintiff and Subclass members, in violation of
16 section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass
17 members with second 30-minute meal periods to which they were entitled, Defendants kept no
18 records of meal start and end times for second meal periods.

19 94. Plaintiff and Subclass members are entitled to recover from Defendants the
20 greater of their actual damages caused by Defendants’ failure to comply with California Labor
21 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
22 employee.

23 **SIXTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 25 **Termination** 26 **(Against all Defendants)**

27 95. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 96. This cause of action is dependent upon, and wholly derivative of, the overtime
2 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
3 not timely paid to Plaintiff and those class members no longer employed by Defendants upon
4 their termination.

5 97. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
6 that if an employer discharges an employee, the wages earned and unpaid at the time of
7 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
8 her employment, his or her wages shall become due and payable not later than seventy-two
9 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
10 his or her intention to quit, in which case the employee is entitled to his or her wages at the
11 time of quitting.

12 98. Defendants willfully failed to pay Plaintiff and class members who are no
13 longer employed by Defendants the earned and unpaid wages set forth above, including but
14 not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or
15 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their
16 leaving Defendants' employ.

17 99. Defendants' failure to pay Plaintiff and class members who are no longer
18 employed by Defendants their wages earned and unpaid at the time of discharge, or within
19 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
20 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
21 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
22 thirty (30) day maximum pursuant to California Labor Code section 203.

23 **SEVENTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 25 **Employment** 26 **(Against all Defendants)**

27 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 101. This cause of action is dependent upon, and wholly derivative of, the overtime
2 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
3 not timely paid to Plaintiff and those class members.

4 102. At all times relevant herein set forth, Labor Code section 204 provides that all
5 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
8 the month during which the labor was performed.

9 103. At all times relevant herein, Labor Code section 204 provides that all wages
10 earned by any person in any employment between the sixteenth (16th) and the last day,
11 inclusive, of any calendar month, other than those wages due upon termination of an
12 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
13 month.

14 104. At all times relevant herein, Labor Code section 204 provides that all wages
15 earned for labor in excess of the normal work period shall be paid no later than the payday for
16 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
17 204 provides that the requirements of this section are deemed satisfied by the payment of
18 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
19 seven (7) calendar days following the close of the payroll period.

20 105. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 class members all wages due including, but not limited to, overtime wages, minimum wages,
22 meal and rest period premiums, and/or reporting time pay, within the time periods specified
23 by California Labor Code section 204.

24 106. Defendants' failure to pay Plaintiff and class members all wages due violates
25 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
26 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

27 //

28 //

1 **EIGHTH CAUSE OF ACTION**

2 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
3 **11040 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
4 **(Against all Defendants)**

5 107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 108. California Labor Code section 1198 dictates that no employer may employ an
8 employee under conditions of labor that are prohibited by the applicable IWC wage order.
9 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
10 fixed by the commission shall be the . . . standard conditions of labor for employees. The
11 employment of any employee . . . under conditions of labor prohibited by the order is
12 unlawful.”

13 109. The applicable IWC wage order, California Code of Regulations, Title 8,
14 section 11040(5)(A), provides that “[e]ach workday an employee is required to report for
15 work and does report, but is not put to work or is furnished less than half said employee’s
16 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
17 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
18 employee’s regular rate of pay, which shall not be less than the minimum wage.”

19 110. During the relevant time period, Defendants violated California Labor Code
20 section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because
21 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
22 work for their scheduled shift but were put to work for less than half of the regularly
23 scheduled day’s work.

24 111. Defendants had a company-wide practice of sending Plaintiff and class
25 members home early from their shifts, including before they had worked at least half of their
26 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
27 For example, Plaintiff would report to work, but would be sent home immediately or before
28 working half of her scheduled shift by Defendants’ management because she was not needed.

Specifically, on February 5, 2021, Plaintiff was sent home after working one (1) hour of her scheduled eight (8) hour shift. On the corresponding wage statement for that pay period, Plaintiff was paid for only the one (1) hour that she had worked that day, and, despite being sent home before working half of her scheduled shift, did not receive any reporting time pay. Although Plaintiff and class members would report to work based on the schedule that Defendants provided to them, Defendants would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

112. Accordingly, Plaintiff and class members were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

NINTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

114. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

115. During the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and class members to utilize their own mobile devices, including but not limited to personal cellular phones, and/or mobile data to carry out their job duties, but failed

1 to reimburse them for the costs of their work-related mobile device expenses. Plaintiff and
2 class members were required to use their personal mobile devices to complete their work-
3 related tasks, including downloading and utilizing mobile applications to record their time and
4 communicating with supervisors and other employees during and outside of their shifts. For
5 example, from the beginning of her employment until approximately May 2021, Plaintiff was
6 required to download and install the application “ADP” onto her personal cellular phone and
7 use the application to clock in and out from her shifts because she was not provided with any
8 alternative method of recording her time. Moreover, during this same time period, Plaintiff
9 was required to use her personal cellular phone for six (6) hours per shift to provide updates to
10 her supervisor and communicate with Counselors managing other floors of the house. As a
11 further example, as stated, Plaintiff was also required to use her personal cellular phone to
12 answer calls off-the-clock from her supervisors twice per week to discuss incidents that had
13 occurred during her shifts. Although Defendants required Plaintiff and class members to
14 utilize their personal mobile devices and/or mobile data to carry out their work-related
15 responsibilities, Defendants failed to reimburse them for this cost.

16 116. In addition, Defendants, on a company-wide basis, required Plaintiff and class
17 members use their own personal vehicles to carry out company business, such as driving
18 residents to medical appointments and attending mandatory trainings, but failed to reimburse
19 them for all costs of travel, including mileage. For example, because Defendants failed to
20 keep their company vehicles in working condition, Plaintiff was required to use her personal
21 vehicle to drive 20-30 miles per month for approximately six (6) months to accompany
22 residents to medical appointments. As a further example, Plaintiff was required to drive
23 several miles to attend mandatory in-person training courses at Defendants’ office in Santa
24 Cruz, California, but was not reimbursed for her mileage to and from these trainings.
25 Although Defendants required Plaintiff and class members to utilize their own vehicles and
26 complete these tasks as part of their job duties, Defendants did not fully reimburse them for
27 their travel expenses.

28 117. Defendants could have provided Plaintiff and class members with the actual

1 tools for use on the job, such as company mobile devices and company vehicles. Or,
2 Defendants could have reimbursed employees for the costs of their mobile device usage,
3 travel expenses, and mileage. Instead, Defendants passed these operating costs off onto
4 Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times
5 the minimum wage.

6 118. Defendants' company-wide policy and/or practice of passing on their operating
7 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
8 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
9 business-related expenses and costs.

10 119. Plaintiff and class members are entitled to recover from Defendants their
11 business-related expenses incurred during the course and scope of their employment, plus
12 interest.

13 **TENTH CAUSE OF ACTION**

14 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

15 **(Against all Defendants)**

16 120. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 121. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
20 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a),
21 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
22 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
23 violations of those Labor Code sections not found in section 2699.5, including sections 516
24 and 1182.12.

25 122. Defendants' conduct, as alleged herein, violates numerous sections of the
26 California Labor Code, including, but not limited to, the following:

- 27 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
28 Wage Order for Defendants' failure to compensate Plaintiff and other

- aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein and further set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment to Plaintiff and other aggrieved employees, as alleged herein;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay other aggrieved employees all earned wages upon termination, as alleged herein;
- (i) Violation of California Labor Code section 222.5 for failure to pay the costs of mandatory physical examinations and/or testing, as set forth below;

1 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
2 Order for failing to pay reporting time pay to Plaintiff and other
3 aggrieved employees, as alleged herein; and

4 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
5 and other aggrieved employees for all business expenses necessarily
6 incurred, as alleged herein and further set forth below.

7 123. At all relevant times herein, California Labor Code section 222.5 requires
8 employers to pay for the costs an employee incurs for obtaining any required medical or physical
9 examination.

10 124. During the relevant time period, Defendants implemented, on a company-wide
11 basis, an employer-imposed requirement that other aggrieved employees undergo mandatory
12 tuberculin (TB) testing and/or physical examinations, but required them to do so at their own
13 expense. Defendants had a company-wide policy requiring that other aggrieved employees
14 travel to a specified medical facility on their own time and use their own means of
15 transportation to undergo TB testing and/or physical examinations. At all times, Defendants
16 were in control of scheduling the date and time for the testing and/or examinations, selecting
17 the provider/facility where the testing and/or examinations were to take place, and
18 determining the scope of the testing and/or examinations. However, Defendants did not
19 compensate other aggrieved employees for the time they spent traveling to and from the
20 medical facilities, for the time they spent undergoing the testing and/or physical examinations,
21 or reimburse them for the travel expenses they incurred getting to and from the medical
22 facilities. Defendants' policy and/or practice of not paying for all costs other aggrieved
23 employees incurred obtaining mandatory TB testing and/or physical examinations is in
24 violation of California Labor Code section 222.5. Other aggrieved employees are therefore
25 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

26 125. As aforesaid, at all relevant times, California Labor Code sections 1182.12,
27 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the
28 IWC is the minimum wage to be paid to employees, and the payment of a wage less than the

1 minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-
2 2001 as “the time during which an employee is subject to the control of an employer, and
3 includes all the time the employee is suffered or permitted to work, whether or not required to
4 do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

5 126. During the relevant time period, as stated, Defendants maintained and
6 implemented a company-wide policy of requiring employees to undergo mandatory TB testing
7 and/or physical examinations, and Defendants were in control of scheduling the dates and
8 times for the testing and/or examinations, selecting the provider/facility where the testing
9 and/or examinations were to take place, and determining the scope of the testing and/or
10 examinations. Defendants gave other aggrieved employees strict instructions to obtain TB
11 testing and/or physical examinations, and other aggrieved employees underwent the testing
12 and/or examinations for the sole benefit of Defendants. However, Defendants did not
13 compensate other aggrieved employees for the time they spent traveling to and from the
14 medical facility and/or provider or for the time they spent undergoing the TB testing and/or
15 physical examinations. Thus, Defendants did not pay minimum wages for all hours worked
16 by other aggrieved employees. Defendants’ failure to pay other aggrieved employees
17 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
18 1198. Other aggrieved employees are entitled to recover civil penalties pursuant to Labor
19 Code sections 1197.1 and/or 2699(a), (f), and (g).

20 127. As stated, California Labor Code section 2802 requires employers to pay for all
21 necessary expenditures and losses incurred by the employee in the performance of his or her
22 job. The purpose of Labor Code section 2802 is to prevent employers from passing off their
23 cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s*
24 *Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC
25 Wage Order No. 4-2001, provides that: “[w]hen tools or equipment are required by the
26 employer or are necessary to the performance of a job, such tools and equipment shall be
27 provided and maintained by the employer, except that an employee whose wages are at least
28 two (2) times the minimum wage provided herein may be required to provide and maintain

1 hand tools and equipment customarily required by the trade or craft.”

2 128. As also stated, during the relevant time period, Defendants had a company-
3 wide policy of requiring other aggrieved employees to travel in their personal vehicles or
4 alternate transportation to obtain mandatory TB testing and/or physical examinations, but did
5 not reimburse them for their travel expenses, including mileage. At all times, Defendants
6 were in control of scheduling the date and time for the testing and/or physical examinations,
7 selecting the provider or facility where the testing and/or physical examinations were to take
8 place, and determining the scope of the testing and/or physical examinations. Defendants
9 gave other aggrieved employees strict instructions to obtain TB testing and/or physical
10 examinations, and other aggrieved employees underwent the testing and/or examinations for
11 the sole benefit of Defendants. Although Defendants required other aggrieved employees to
12 use their own vehicles or obtain alternate transportation to undergo mandatory TB testing
13 and/or physical examinations, Defendants never reimbursed them for their travel expenses.
14 Defendants could have provided other aggrieved employees with the actual tools for use on
15 the job, such as company vehicles. Or, Defendants could have reimbursed employees for the
16 costs of their travel expenses and mileage. Instead, Defendants passed these operating costs
17 off onto other aggrieved employees. Thus, Defendants had, and continues to have, a
18 company-wide policy and/or practice of not reimbursing employees for expenses necessarily
19 incurred in violation of California Labor Code section 2802. Other aggrieved employees are
20 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **ELEVENTH CAUSE OF ACTION**

22 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

23 **Unlawful Business Practices**

24 **(Against all Defendants)**

25 129. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 130. Defendants are “persons” as defined by California Business & Professions
28 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

2 131. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 unlawful, and harmful to Plaintiff, class members, and to the general public. Plaintiff has
4 suffered injury in fact and has lost money as a result of Defendants' unlawful business
5 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
6 meaning of Code of Civil Procedure section 1021.5.

7 132. Defendants' activities, as alleged herein, are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business &
9 Professions Code sections 17200, *et seq.*

10 133. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
12 policies and practices have violated state law in at least the following respects:

- 13 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
14 class members, to work overtime without paying them proper
15 compensation in violation of California Labor Code sections 510 and
16 1198, and the applicable IWC Wage Order, as alleged herein;
- 17 (b) Failing to pay at least minimum wage to Plaintiff and class members in
18 violation of California Labor Code sections 1182.12, 1194, 1197,
19 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
20 herein;
- 21 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
22 members in violation of California Labor Code sections 226.7, 512(a),
23 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 24 (d) Failing to authorize and permit Plaintiff and class members to take
25 uninterrupted rest periods in violation of California Labor Code sections
26 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
27 herein;
- 28 (e) Failing to provide Plaintiff and class members with accurate wage

statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;

(g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as alleged herein; and

(h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

134. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

135. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TWELFTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

136. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

137. Defendants are "persons" as defined by California Business & Professions

Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

138. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

139. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

140. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

141. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil

1 Procedure section 1021.5 and other applicable laws; and an award of costs.

2 **REQUEST FOR JURY TRIAL**

3 Plaintiff requests a trial by jury.

4 **PRAYER FOR RELIEF**

5 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
6 against Defendants, jointly and severally, as follows:

7 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
8 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
9 reserves the right to amend her prayer for relief to seek a different amount.

10 **Class Certification**

11 2. That this case be certified as a class action;

12 3. That Plaintiff be appointed as the representative of the Class and Subclass;

13 4. That counsel for Plaintiff be appointed as class counsel.

14 **As to the First Cause of Action**

15 5. That the Court declare, adjudge, and decree that Defendants violated California
16 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
17 pay all overtime wages due to Plaintiff and class members;

18 6. For general unpaid wages at overtime wage rates and such general and special
19 damages as may be appropriate;

20 7. For pre-judgment interest on any unpaid overtime compensation commencing
21 from the date such amounts were due, or as otherwise provided by law;

22 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
23 California Labor Code section 1194(a); and

24 9. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Second Cause of Action**

27 10. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage

Order by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully
2 failing to authorize and permit Plaintiff and class members to take all rest periods;

3 24. That the Court make an award to the Plaintiff and class members of one (1) hour
4 of pay at each employee's regular rate of pay for each workday that a rest period was not
5 authorized and permitted;

6 25. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 26. For premiums pursuant to California Labor Code section 226.7(c);

9 27. For pre-judgment interest on any unpaid rest period premiums from the date
10 such amounts were due, or as otherwise provided by law;

11 28. For attorneys' fees pursuant to California Code of Civil Procedure section
12 1021.5, or as otherwise provided by law; and

13 29. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Fifth Cause of Action**

16 30. That the Court declare, adjudge and decree that Defendants violated the
17 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
18 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
19 itemized wage statements thereto;

20 31. For all actual, consequential, and incidental losses and damages, according to
21 proof;

22 32. For injunctive relief pursuant to California Labor Code section 226(h);

23 33. For statutory penalties pursuant to California Labor Code section 226(e);

24 34. For attorneys' fees and costs pursuant to California Labor Code section
25 226(e)(1); and

26 35. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

1 47. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Eighth Cause of Action**

4 48. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A) by
6 failing to provide Plaintiff and class members with reporting time pay;

7 49. For all actual, consequential and incidental losses and damages, according to
8 proof;

9 50. For pre-judgment interest on any unpaid wages from the date such amounts
10 were due, or as otherwise provided by law; and

11 51. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Ninth Cause of Action**

14 52. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
16 related expenses and costs incurred by Plaintiff and class members;

17 53. For unpaid business-related expenses and such general and special damages as
18 may be appropriate;

19 54. For pre-judgment interest on any unpaid business-related expenses from the
20 date such amounts were due, or as otherwise provided by law;

21 55. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 56. For attorneys' fees and costs pursuant to California Labor Code section
24 2802(c), or as otherwise provided by law; and

25 57. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Tenth Cause of Action**

28 58. That the Court declare, adjudge and decree that Defendants violated the

following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 222.5 (by failing to pay for costs of mandatory physical exams and/or drug testing); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

61. For pre-judgment and post-judgment interest as provided by law; and
For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

62. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing

1 to pay Plaintiff and class members reporting time pay, and failing to reimburse Plaintiff and
2 class members for business-related expenses constitutes an unlawful business practice in
3 violation of California Business and Professions Code sections 17200, *et seq.*;

4 63. For restitution of unpaid wages to Plaintiff and all class members and pre-
5 judgment interest from the day such amounts were due and payable;

6 64. For the appointment of a receiver to receive, manage, and distribute any and all
7 funds disgorged from Defendants and determined to have been wrongfully acquired by
8 Defendants as a result of violations of California Business & Professions Code sections
9 17200, *et seq.*;

10 65. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Code of Civil Procedure section 1021.5; and

12 66. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Twelfth Cause of Action**

15 67. That the Court declare, adjudge and decree that Defendants' conduct of denying
16 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
17 an unfair business practice in violation of California Business and Professions Code sections
18 17200, *et seq.*;

19 68. For restitution of the statutory benefits under section 226.7 unfairly withheld
20 from Plaintiff and class members and pre-judgment interest from the day such amounts were
21 due and payable;

22 69. For the appointment of a receiver to receive, manage, and distribute any and all
23 funds disgorged from Defendants and determined to have been wrongfully acquired by
24 Defendants as a result of violations of California Business & Professions Code sections
25 17200, *et seq.*;

26 70. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
27 California Code of Civil Procedure section 1021.5;

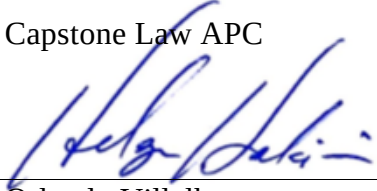
28 71. For pre-judgment and post-judgment interest as provided by law; and

1 72. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4
5 Dated: November 15, 2021

Respectfully submitted,

Capstone Law APC

6
7
8 By: 

Orlando Villalba

Helga Hakimi

Roxanna Tabatabaeepour

Attorneys for Plaintiff Daisy Espinoza

EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

September 7, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Daisy Espinoza v. Encompass Community Services*

Dear PAGA Administrator:

This office represents Daisy Espinoza in connection with her claims under the California Labor Code. Ms. Espinoza was an employee of ENCOMPASS COMMUNITY SERVICES ("ENCOMPASS").

The employer may be contacted directly at the address below:

ENCOMPASS COMMUNITY SERVICES
380 ENCINAL STREET
SANTA CRUZ CA 95060

Ms. Espinoza intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Espinoza seeks relief on behalf of herself, the State of California, and other persons who are or were employed by ENCOMPASS in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ENCOMPASS employed Ms. Espinoza as a non-exempt, hourly paid On-Call Counselor from approximately March 2019 to June 2021. Ms. Espinoza worked for ENCOMPASS at its Tyler House location in Watsonville, California. She typically worked eight (8) to ten (10) hours per day, and two (2) days per week. At the time her employment ended, Ms. Espinoza was compensated approximately \$18.00 per hour. Her job duties included, without limitation, supervising and attending to clients/residents, cooking and preparing food, accompanying residents to outings and medical appointments, and completing incident reports.

ENCOMPASS has committed one or more of the following Labor Code violations against Ms. Espinoza, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

ENCOMPASS’s Company-Wide and Uniform Payroll and HR Practices

ENCOMPASS COMMUNITY SERVICES is a California corporation and a provider of community programs offering behavioral health, family and social well-being, early childhood education, and housing services in Santa Cruz County, California. Upon information and belief, ENCOMPASS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Santa Cruz, California, for all non-exempt, hourly paid employees working for ENCOMPASS in California, including Ms. Espinoza and other aggrieved employees. At all relevant times, ENCOMPASS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Espinoza and other aggrieved employees, regardless of their location or position.

Upon information and belief, ENCOMPASS maintains a centralized Payroll department at its corporate headquarters in Santa Cruz, California, which processes payroll for all non-exempt, hourly paid employees working for ENCOMPASS in California, including Ms. Espinoza and other aggrieved employees. Further, ENCOMPASS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Espinoza and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, ENCOMPASS utilized the same methods and formulas when calculating wages due to Ms. Espinoza and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

ENCOMPASS willfully failed to pay all overtime wages owed to Ms. Espinoza and other aggrieved employees. During the relevant time period, Ms. Espinoza and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Ms. Espinoza’s experience and counsel’s review of those records currently available relating to Ms. Espinoza’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Espinoza reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, upon information and belief, ENCOMPASS's timekeeping system did not always register and calculate overtime hours and wages correctly when Ms. Espinoza and other aggrieved employees inputted their hours. For example, ENCOMPASS's timekeeping records show that Ms. Espinoza input more than eight (8) hours as "Regular" time, but was not paid overtime wages for the hours exceeding eight (8) hours per day. Thus, on information and belief, Ms. Espinoza was not paid at an overtime rate for hours worked over eight (8).

Second, during the relevant period, ENCOMPASS had a company-wide policy and/or practice of rounding or underreporting employee clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. ENCOMPASS's rounding policy resulted in the failure to compensate Ms. Espinoza and other aggrieved employees fully for all hours worked, causing Ms. Espinoza and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. ENCOMPASS's timekeeping practices are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Ms. Espinoza and other aggrieved employees. To the extent ENCOMPASS's rounding policy has taken away time worked that was eligible for overtime, Ms. Espinoza and other aggrieved employees were denied overtime pay for all hours worked.

Third, ENCOMPASS had, and continues to have, a company-wide policy and/or practice of requiring Ms. Espinoza and other aggrieved employees to complete work-related tasks while off-the-clock, such as completing online training modules from home and responding to communications from management on their personal cellular phones to discuss work-related matters outside of their shifts, but did not compensate them for all of this time. For example, Ms. Espinoza was instructed by her supervisor to complete online medical privacy training on her day off, which took over one (1) hour to complete. As another example, Ms. Espinoza was required to answer calls from her supervisors twice per week and spend 10-30 minutes discussing incidents that had occurred during her shift. However, ENCOMPASS did not compensate Ms. Espinoza and other aggrieved employees for this time spent working off-the-clock.

Fourth, ENCOMPASS has systematically, and on a company-wide basis, understaffed its locations while assigning heavy workloads, which resulted in a failure to provide other aggrieved employees with adequate meal period coverage. Because there was no one available to relieve other aggrieved employees needing meal period coverage, on information and belief, ENCOMPASS required other aggrieved employees to remain on-duty at all times and/or work during their unpaid meal periods. ENCOMPASS also had a practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of these policies, other aggrieved employees were not provided timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period.

ENCOMPASS knew or should have known that as a result of these company-wide practices and/or policies, Ms. Espinoza and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Espinoza and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Espinoza and other

aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, ENCOMPASS did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, ENCOMPASS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ENCOMPASS failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, ENCOMPASS failed to pay all overtime wages by paying a lower overtime rate than required.

ENCOMPASS's failure to pay Ms. Espinoza and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As stated above, ENCOMPASS had a company-wide policy and/or practice of rounding or underreporting Ms. Espinoza's and other aggrieved employees' hourly clock-in and clock-out times in its timekeeping system to the nearest quarter hour, resulting in the failure to compensate them for all hours worked. In addition, as set forth above, ENCOMPASS required Ms. Espinoza and other aggrieved employees to respond to communications from ENCOMPASS's management and complete online trainings while off-the-clock, but did not compensate them for this time. Moreover, as set forth above, due to ENCOMPASS's uniform practices of understaffing its locations, assignment of heavy workloads, failure to schedule of meal periods, and subsequent lack of meal period coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Moreover, ENCOMPASS maintained and implemented a company-wide policy of requiring employees to undergo mandatory tuberculin (TB) testing and/or physical examinations. At all times, ENCOMPASS was in control of scheduling the dates and times for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. ENCOMPASS gave other aggrieved employees strict instructions to obtain TB testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of ENCOMPASS. However, ENCOMPASS did not compensate other aggrieved employees for the time they spent traveling to and from the medical facility and/or provider or for the time they spent undergoing the TB testing and/or physical examinations.

Thus, ENCOMPASS did not pay minimum wages for all hours worked by Ms. Espinoza and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, ENCOMPASS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, ENCOMPASS regularly failed to pay at least minimum wages to Ms. Espinoza and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under California law, an employer cannot evade meal break requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

First, ENCOMPASS has systematically, and on a company-wide basis, understaffed its locations while simultaneously assigning heavy workloads, which resulted in a failure to provide adequate meal period coverage to permit employees to take compliant meal periods. Because there was no one available to relieve Ms. Espinoza and other aggrieved employees needing meal period coverage, ENCOMPASS required Ms. Espinoza and other aggrieved employees to remain on-duty at all times. As a result, Ms. Espinoza and other aggrieved employees always had to remain available to attend to clients and address any incidents as they arose, including during meal periods.

Second, ENCOMPASS, on a company-wide basis, also systematically discouraged and impeded Ms. Espinoza and other aggrieved employees from taking meal periods by failing to schedule meal periods at all, even though it is aware and knows that employees are entitled to such meal periods. For example, ENCOMPASS typically scheduled Ms. Espinoza's shifts to begin at 7:00 a.m. and end at 3:00 p.m., without accounting for her 30-minute meal periods. Instead, ENCOMPASS required that Ms. Espinoza and other aggrieved employees sign "on duty" meal period agreements upon threat of termination. Specifically, ENCOMPASS's "Agreement for On-Duty Meal Period" provides,

“Should an employee revoke this agreement, their employment may be terminated, depending on the needs of the program.” As a result of these policies, Ms. Espinoza and other aggrieved employees were not provided timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period.

Moreover, to the extent ENCOMPASS required its employees to sign written “on-duty” meal period agreements, such agreements were invalid under California law. ENCOMPASS’s “on-duty” meal period policy results from the company’s own staffing and business decisions, not because the nature of the work required on-duty meal periods. There were multiple employees employed by ENCOMPASS at Ms. Espinoza’s and other aggrieved employees’ locations and Defendant’s locations are not in remote areas. ENCOMPASS could have provided rover break coverage for Ms. Espinoza and other aggrieved employees or staffed more employees at its facilities, but chose not to do so. Further, the work of ENCOMPASS’s employees is not of the kind that could be said to meet the “nature of the work” exception. Ms. Espinoza and other aggrieved employees were responsible for providing counseling, preparing reports, and supervising clients/residents. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement (“DLSE”) has found warrant an “on-duty” meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Therefore, ENCOMPASS’s use of an “on-duty” meal period is improper and unlawful. Because of ENCOMPASS’s company-wide written “on-duty” meal period policy, Ms. Espinoza and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

ENCOMPASS’s practices and policies prevented Ms. Espinoza and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Espinoza and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, because Ms. Espinoza was required to remain on-duty during her meal periods, she had to forego meal periods altogether.

Additionally, ENCOMPASS did not schedule second meal periods and had no policy for permitting Ms. Espinoza and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Espinoza worked shifts in excess of ten (10) hours per day several times during her employment, but was also required to forego her second meal periods to remain on-duty. Ms. Espinoza and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, ENCOMPASS knew or should have known that, as a result of these policies, Ms. Espinoza and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. ENCOMPASS further knew or should have known that it did not pay Ms. Espinoza and other aggrieved employees all meal period premiums when meal periods were late, missed, shortened, or interrupted.

As set forth above, ENCOMPASS has a company-wide policy and/or practice of rounding employee clock-in and clock-out times in its timekeeping system, which prevented other aggrieved employees from receiving all meal period premiums when they took late and/or shortened meal periods. As stated, ENCOMPASS’s rounding policy rounded employees’ clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. To the extent that ENCOMPASS’s

timekeeping system reported that other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, other aggrieved employees were entitled to a meal period penalty. Thus, other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

Furthermore, ENCOMPASS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Espinoza and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that ENCOMPASS did pay other aggrieved employees for missed, late, and interrupted meal periods, ENCOMPASS did not pay other aggrieved employees at the correct rate of pay for premiums because ENCOMPASS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ENCOMPASS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Espinoza and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, ENCOMPASS regularly failed to authorize and permit Ms. Espinoza and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ENCOMPASS's company-wide scheduling policies and/or practices, or lack thereof, prevented Ms. Espinoza and other aggrieved employees from being relieved of all duties in order to take compliant rest periods. ENCOMPASS had no policy for scheduling rest periods for employees and no policy for assigning employees coverage to take rest a rest period, which further impeded and prevented Ms. Espinoza and other aggrieved employees from taking compliant rest periods.

ENCOMPASS also maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Espinoza and other aggrieved employees remain on-duty and on ENCOMPASS's premises during their rest periods. Because Ms. Espinoza and other aggrieved employees were required to continue working and restricted from leaving ENCOMPASS's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. For instance, Ms. Espinoza was required to remain on-duty during her rest periods to provide constant care and supervision to ENCOMPASS's clients/residents and was unable to take brief walks outside to get fresh air. Thus, ENCOMPASS effectively maintained control over Ms. Espinoza and other aggrieved employees during rest periods.

As a result of ENCOMPASS's practices and policies, Ms. Espinoza and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, because Ms. Espinoza was required to remain on-duty during her rest periods, she had to forego rest periods altogether.

ENCOMPASS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Espinoza and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ENCOMPASS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ENCOMPASS did not pay other aggrieved employees at the correct rate of pay for premiums because ENCOMPASS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ENCOMPASS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Espinoza and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ENCOMPASS has not provided Ms. Espinoza and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ENCOMPASS has knowingly and intentionally provided Ms. Espinoza and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ENCOMPASS issued uniform wage statements to Ms. Espinoza and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and

all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, ENCOMPASS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because ENCOMPASS did not record the time Ms. Espinoza and other aggrieved employees spent working off-the-clock and improperly rounded their clock-in and clock-out times, ENCOMPASS did not list the correct amount of gross wages and net wages earned by Ms. Espinoza and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, ENCOMPASS failed to accurately list the total number of the hours worked by Ms. Espinoza and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because ENCOMPASS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, ENCOMPASS did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). ENCOMPASS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), ENCOMPASS willfully failed to maintain accurate payroll records for Ms. Espinoza and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, ENCOMPASS engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Espinoza and other aggrieved

employees, in violation of section 1198. Furthermore, in light of ENCOMPASS's failure to provide Ms. Espinoza and other aggrieved employees with second 30-minute meal periods to which they were entitled, ENCOMPASS kept no records of meal start and end times for second meal periods.

Because ENCOMPASS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Espinoza and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Espinoza and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, ENCOMPASS failed to pay Ms. Espinoza and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

ENCOMPASS willfully failed to pay Ms. Espinoza and other aggrieved employees who are no longer employed by ENCOMPASS all their earned wages, including, but not limited to, overtime

wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving ENCOMPASS's employ.

Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Medical Examinations

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, ENCOMPASS implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory tuberculin (TB) testing and/or physical examinations, but required them to do so at their own expense. As stated, ENCOMPASS had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo TB testing and/or physical examinations. At all times, ENCOMPASS was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, ENCOMPASS did not compensate other aggrieved employees for the time they spent traveling to and from the medical facility, for the time they spent undergoing the testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facility. ENCOMPASS's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory TB testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11040 subdivision 5(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and

who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, ENCOMPASS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040 subdivision 5(A), because ENCOMPASS failed to pay Ms. Espinoza and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day’s work.

ENCOMPASS had a company-wide practice of sending Ms. Espinoza and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Ms. Espinoza and other aggrieved employees for half of their scheduled shift. For example, Ms. Espinoza would report to work, but would be sent home immediately or before working half of her scheduled shift by ENCOMPASS’s management because she was not needed. Specifically, on February 5, 2021, Ms. Espinoza was sent home after working one (1) hour of her scheduled eight (8) hour shift. On the corresponding wage statement for that pay period, Ms. Espinoza was paid for only the one (1) hour that she had worked that day, and, despite being sent home before working half of her scheduled shift, did not receive any reporting time pay. Although Ms. Espinoza and other aggrieved employees would report to work based on the schedule that ENCOMPASS provided to them, ENCOMPASS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Espinoza and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040 subdivision 5(A). Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, ENCOMPASS had a company-wide policy of requiring Ms. Espinoza and other aggrieved employees to utilize their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Ms. Espinoza and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, including downloading and utilizing cellular phone applications to record their time and communicating with supervisors and other employees during and outside of their shifts. For example, from the beginning of her employment until approximately May 2021, Ms. Espinoza was required to download and install the application “ADP” onto her personal cellular phone and use the application to clock in and out from her shifts

because she was not provided with any alternative method of recording her time. Moreover, during this same time period, Ms. Espinoza was required to use her personal cellular phone for six (6) hours per shift to provide updates to her supervisor and communicate with Counselors managing other floors of the house. As a further example, as stated, Ms. Espinoza was also required to use her personal cellular phone to answer calls off-the-clock from her supervisors twice per week to discuss incidents that had occurred during her shifts. Although ENCOMPASS required Ms. Espinoza and other aggrieved employees to utilize their personal cellular phones and/or cellular data to carry out their work-related responsibilities, ENCOMPASS failed to reimburse them for this cost.

In addition, ENCOMPASS, on a company-wide basis, required Ms. Espinoza and other aggrieved employees use their own personal vehicles to carry out company business, such as driving residents to medical appointments and attending mandatory trainings, but failed to reimburse them for all costs of travel, including mileage. For example, because ENCOMPASS failed to keep their company vehicles in working condition, Ms. Espinoza was required to use her personal vehicle to drive 20-30 miles per month for approximately six (6) months to accompany residents to medical appointments. As a further example, Ms. Espinoza was required to drive several miles to attend mandatory in-person training courses at ENCOMPASS's office in Santa Cruz, California, but was not reimbursed for her mileage to and from these trainings. Although ENCOMPASS required Ms. Espinoza and other aggrieved employees to utilize their own vehicles and complete these tasks as part of their job duties, ENCOMPASS did not fully reimburse them for their travel expenses.

As also stated, ENCOMPASS had a company-wide policy of requiring other aggrieved employees to travel in their personal vehicles or alternate transportation to obtain mandatory tuberculin (TB) testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, ENCOMPASS was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. ENCOMPASS gave other aggrieved employees strict instructions to obtain TB testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of ENCOMPASS. Although ENCOMPASS required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo mandatory TB testing and/or physical examinations, ENCOMPASS never reimbursed them for their travel expenses.

ENCOMPASS could have provided Ms. Espinoza and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles. Or, ENCOMPASS could have reimbursed employees for the costs of their cellular phone, travel expenses, and mileage. Instead, ENCOMPASS passed these operating costs off onto Ms. Espinoza and other aggrieved employees. At all relevant times, Ms. Espinoza did not earn at least two (2) times the minimum wage.

Thus, ENCOMPASS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” ENCOMPASS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Espinoza’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Espinoza seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Espinoza, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against ENCOMPASS for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Espinoza seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: ENCOMPASS COMMUNITY SERVICES (via U.S. Certified Mail)



7021 1970 0000 0191 2080

one
LAW APC
ary Park East, Ste 1000
CA 90067

ENCOMPASS COMMUNITY SERVICES
380 ENCINAL STREET
SANTA CRUZ CA 95060



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ENCOMPASS COMMUNITY SERVICES
380 ENCINAL STREET
SANTA CRUZ CA 95060



9590 9402 1512 5362 2490 93

2. Article Number (Transfer from service label)

7021 1970 0000 0191 2080

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

- | | |
|---|---------|
| ☒ Return Receipt (hardcopy) | \$ 2.55 |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

Street and Apt. No., or PO Box No.

ENCOMPASS COMMUNITY SERVICES

380 ENCINAL STREET

City, State, ZIP+4®

SANTA CRUZ CA 95060

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Espinoza v.
Encompass
Community Service

7021 1970 0000 0191 2080

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ENCOMPASS COMMUNITY SERVICES
380 ENCINAL STREET
SANTA CRUZ CA 95060



9590 9402 1512 5362 2490 93

2. Article Number (Transfer from service label)

7021 1970 0000 0191 2080

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *JE 6019*

☒ Agent
☐ Addressee

B. Received by (Printed Name)

COUD R

C. Date of Delivery

9/10

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **December 14, 2021**, I served the document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Kathleen Carter
kcarter@messner.com
Jeffrey Gillette
jgillette@messner.com
MESSNER REEVES LLP
650 Town Center Drive, Suite 700
Costa Mesa, CA 92626

Attorneys for:
ENCOMPASS COMMUNITY
SERVICES

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.
- ☐ **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 14, 2021**, at Los Angeles, California.

Riley McIntire

Type or Print Name



Signature