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8
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on behalf of herself, the State of California,
and others similarly situated and aggrieved
10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**
13

14 EUGENIA CALVA DE GARCIA, on
behalf of herself, the State of California,
15 and others similarly situated and
aggrieved,
16

17 Plaintiff,

18 v.
19

20 GNIMGT, INC., a California corporation;
GOOD NITE INN SYLMAR, INC., a
21 California corporation; and DOES 1-100,
inclusive,
22

23 Defendants.
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27
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Case No.: **22STCV03262**

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, et
seq.**

1 Plaintiff, EUGENIA CALVA DE GARCIA (“PLAINTIFF”), as an individual on behalf of herself,
2 the State of California, and all other Aggrieved Employees, hereby files this Complaint against
3 Defendant GNIMGT, INC. (“GNIMGT”), Defendant GOOD NITE INN SYLMAR, INC.
4 (“GOOD NITE INN SYLMAR”), and DOES 1-100, inclusive (collectively referred to as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 INTRODUCTION

7
8 1. This is a representative action by PLAINTIFF on behalf of herself, other similarly Aggrieved
9 Employees, and the State of California against DEFENDANTS, pursuant to California’s Private
10 Attorney General Act, Labor Code section 2698 et. seq., to recover civil penalties (75% payable to
11 the Labor and Workforce Development Agency and 25% payable to Aggrieved Employees) for
12 DEFENDANTS’ violations of the California Labor Code as alleged below.

13 JURISDICTION AND VENUE

14
15 2. This court possesses original subject matter jurisdiction over this matter. Venue is proper in
16 Los Angeles County, California, because DEFENDANTS’ principal place of business is in Los
17 Angeles County. Moreover, DEFENDANTS transacts business within this judicial district and
18 some of the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this judicial
19 district. *See, e.g., Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069
20 (venue in a PAGA action is proper in any county where the defendants committed Labor Code
21 violations against some of its employees).

22 THE PARTIES

23
24 3. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF worked
25 for DEFENDANTS in the State of California as a non-exempt, hourly-paid employee during the
26 relevant time period.

1 4. Defendant GNIMGT, INC., is a California corporation that, at all relevant times, was
2 authorized to do business within the State of California and is doing business in the State of
3 California.

4 5. Defendant GOOD NITE INN SYLMAR, INC., is a California corporation that, at all relevant
5 times, was authorized to do business within the State of California and is doing business in the State
6 of California.

7 6. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100,
8 inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant by said
9 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the
10 unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this Complaint to
11 reflect the true names and capacities of the Doe Defendants when such identities become known.
12

13 7. PLAINTIFF is informed and believes that, at all relevant times, each defendant sued in this
14 action, including each defendant sued by the fictitious names DOES 1 through 100, inclusive, was
15 the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
16 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
17 interest of some or all of the other DEFENDANTS, and was engaged with some or all of the other
18 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
19 other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged in this
20 complaint. PLAINTIFF is further informed and believes and thereon alleges that each defendant
21 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
22 times, each defendant knew or should have known about, authorized, ratified, adopted, approved,
23 controlled, aided and abetted the conduct of all other DEFENDANTS.
24
25

26 **JOINT LIABILITY**

27 8. Under California law, the definition of the terms “to employ” are broadly construed under the
28 applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise

1 control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to
2 engage, thereby creating a common law employment relationship. *See Martinez v. Combs*, 49
3 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
4 was to reach situations in which multiple entities control different aspects of the employment
5 relationship. Supervision of the work, in the specific sense of exercising control over how services
6 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
7 wage order. *Ibid.* at 76. A joint employer relationship exists when one entity hires and pays a
8 worker, and the other entity supervises the work. *Id.*

9
10 9. During PLAINTIFF’s employment with DEFENDANTS, PLAINTIFF and the Aggrieved
11 Employees were jointly employed by these DEFENDANTS for purposes of the Wage Orders,
12 under the alternative definitions of “to employ” adopted by the California Supreme Court in
13 *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
14 hours and working conditions of PLAINTIFF and the Aggrieved Employees (defined below); (2)
15 suffered or permitted PLAINTIFF and the Aggrieved Employees to work for them; and (3) engaged
16 PLAINTIFF and the Aggrieved Employees to work for them.

17
18 10. PLAINTIFF is informed and believes, and thereon allege that at all relevant times
19 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
20 human resources as a set forth herein. As a result, DEFENDANTS utilized the same unlawful wage
21 and hour policies and practices across all of their California locations or facilities and subjected all
22 the Aggrieved Employees to these same policies and practices regardless of the location(s) or
23 facility/ies where they worked in California.

24
25 11. PLAINTIFF is informed and believes, and thereon allege that at all times relevant to this
26 Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
27 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
28 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'

1 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
2 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
3 Employees. Specifically, upon information and belief, PLAINTIFF alleges that GNIMGT, and
4 GOOD NITE INN SYLMAR created a uniform set of written policies and procedures concerning,
5 inter alia, hourly and overtime pay, time-keeping practices, meal and rest periods that were
6 distributed to, applied to, and controlled the wages, hours and working conditions of PLAINTIFF
7 and the Aggrieved Employees, and further that GNIMGT and GOOD NITE INN SYLMAR
8 uniformly compensated and controlled the wages of PLAINTIFF and the Aggrieved Employees in
9 a uniform manner. GNIMGT and GOOD NITE INN SYLMAR collectively represented to
10 PLAINTIFF and the Aggrieved Employees that each was an "at-will" employee of
11 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate
12 PLAINTIFF's and the Aggrieved Employees' employment with or without cause. Upon
13 information and belief, GNIMGT and GOOD NITE INN SYLMAR further collectively
14 represented to PLAINTIFF and the Aggrieved Employees in writing the details of their
15 compensation, and the manner in which they were to take meal and rest periods, the procedures
16 required by GNIMGT and GOOD NITE INN SYLMAR collectively for recording hours worked
17 and the policies applicable to PLAINTIFF and the Aggrieved Employees by which GNIMGT and
18 GOOD NITE INN SYLMAR collectively would evaluate the wage rates of PLAINTIFF and the
19 Aggrieved Employees.
20
21

22 12. Thus, GNIMGT and GOOD NITE INN SYLMAR collectively exercised the right to control
23 the wages, hours and working conditions of PLAINTIFF and the Aggrieved Employees. GNIMGT
24 and GOOD NITE INN SYLMAR informed PLAINTIFF and the Aggrieved Employees in writing
25 of the uniform standards by which PLAINTIFF and the Aggrieved Employees would have to abide
26 in their employment with GNIMGT and GOOD NITE INN SYLMAR. Further, upon information
27 and belief, GNIMGT and GOOD NITE INN SYLMAR collectively set forth guidelines concerning
28

1 PLAINTIFF's and the Aggrieved Employees' personal appearance at work with which each was
2 required to comply as a condition of his/her employment. As such, GNIMGT and GOOD NITE
3 INN SYLMAR collectively held the right to control virtually every aspect of PLAINTIFF's and
4 the Aggrieved Employees' employment, including the instrumentality that resulted in the illegal
5 conduct for which PLAINTIFF seeks relief in this Complaint.

6 **PAGA ALLEGATIONS**

7
8 13. PLAINTIFF brings this action under the Private Attorneys General Act of 2004, Labor Code
9 sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State of California and
10 Aggrieved Employees, regarding violations of the California Labor Code and the applicable
11 Industrial Welfare Commission ("IWC") Wage Order as set forth herein as to all Aggrieved
12 Employees. Said "Aggrieved Employees" include:

13 14. All current and former non-exempt employees that worked for DEFENDANTS in California
14 at any time from one year plus 65 days from the filing of the initial Complaint through the present
15 ("PAGA Period").
16

17 15. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code section
18 2699(c), as she was employed by DEFENDANTS during the applicable statute of limitations period
19 and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFF
20 seeks to recover on behalf of herself, the State of California, and all other Aggrieved Employees,
21 the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has
22 standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as
23 she was jointly employed by DEFENDANTS and is thereby affected by one or more of the alleged
24 violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757, a
25 PAGA plaintiff has authority to seek penalties for all known violations committed by the employer
26 – regardless of whether plaintiff experienced all violations personally. *Id.* at 760-761.
27
28

COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENT

16. On October 20, 2021, PLAINTIFF, through her counsel, gave written notice by online filing with the California Labor and Workforce Development Agency ("LWDA") informing it that DEFENDANTS failed to comply with California's labor laws ("PAGA Letter"). Attached hereto as Exhibit 1 is a true and correct copy of the PAGA Letter also sent to DEFENDANTS at the offices of their Agents for Service of process via certified mail. On November 17, 2021, PLAINTIFF provided an amended notice by online filing with the LWDA ("Amended PAGA Letter"). Attached hereto as Exhibit 2 is a true and correct copy of the Amended PAGA Letter also sent to DEFENDANTS at the offices of their Agents for Service of process via certified mail. On November 19, 2021, PLAINTIFF provided a second amended notice by online filing with the LWDA informing it that DEFENDANTS failed to comply with additional California labor laws ("Second Amended PAGA Letter"). Attached hereto as Exhibit 3 is a true and correct copy of the Second Amended PAGA Letter also sent to DEFENDANTS at the offices of their Agents for Service of process via certified mail.

17. The PAGA Letter, Amended PAGA Letter, and Second Amended PAGA Letter outlined PLAINTIFF's claims for violations of the California Labor Code and the applicable wage orders on behalf of herself, the State of California and other Aggrieved Employees.

18. The LWDA did not provide notice of its intention to investigate DEFENDANTS' violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

19. As such, PLAINTIFF seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

FACTUAL AND LEGAL ALLEGATIONS

20. During the PAGA Period, PLAINTIFF, and each of the Aggrieved Employees, were employed by DEFENDANTS in the State of California as non-exempt workers. At all times referenced herein, DEFENDANTS exercised control over PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them to work.

21. PLAINTIFF was employed by DEFENDANTS as a non-exempt, hourly-paid worker from about June 2010 until she was terminated in or about December 2020. PLAINTIFF worked at DEFENDANTS' location in Sylmar, California. PLAINTIFF's job title was housekeeper. PLAINTIFF was typically scheduled to work eight (8) to ten (10) hours per day, three (3) to five (5) days per week. PLAINTIFF was paid on an hourly basis, but only for time counted and recorded by DEFENDANTS as hours worked. PLAINTIFF was also compensated with non-discretionary compensation, e.g., non-discretionary bonuses for meeting cleaning quotas.

Meal Periods.

22. PLAINTIFF and the Aggrieved Employees regularly worked shifts of five and one half (5 ½) hours or more and were entitled to at least one thirty-minute uninterrupted meal break. However, PLAINTIFF and similarly Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods (i.e. after the fifth hour of work), interrupted meal periods and/or work through part or all their meal periods due to the nature and constraints of their job duties, lack of relief workers available, and/or commentary from supervisors pressuring them to take meal periods past the fifth hour of work or to otherwise take noncompliant meal periods or skip meal periods completely in order to complete the cleaning of approximately twenty-three (23) rooms assigned to PLAINTIFF, and similarly large numbers of rooms assigned to similarly Aggrieved Employees.

23. DEFENDANTS were informed of PLAINTIFF's and similarly Aggrieved Employees' inability to take compliant meal periods due to their workloads/lack of relief workers available,

1 because PLAINTIFF and similarly Aggrieved Employees so informed DEFENDANTS'
2 management. DEFENDANTS failed to take any action to remedy the situation. DEFENDANTS
3 required PLAINTIFF and Aggrieved Employees to clean their assigned number of rooms within
4 DEFENDANTS' designated time frames. Yet, during meal and/or rest periods, DEFENDANTS
5 failed to provide relief staff that could help clean rooms to remain on pace to complete the
6 predesignated number of rooms. As such, PLAINTIFF and the Aggrieved Employees were required
7 to work through part or all of their meal periods, take an untimely meal period or skip meal periods
8 completely in order to finish their assigned workload.
9

10 24. Despite failing to provide lawful meal periods, DEFENDANTS implemented a policy and/or
11 practice of automatically deducting thirty minutes and/or requiring PLAINTIFF and other
12 Aggrieved Employees to clock out for at least thirty minutes per shift for these missed/unlawful
13 meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other
14 Aggrieved Employees did not receive compliant meal periods.
15

16 25. DEFENDANTS further implemented policies and practices that failed to relieve
17 PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control during
18 unpaid meal breaks. For example, DEFENDANTS would require PLAINTIFF to monitor her work
19 cell phone for communications from management during purported meal periods.
20

21 26. Moreover, Aggrieved Employees did not receive a compliant thirty-minute meal break
22 before the end of the tenth hour of work when working more than ten hours in a workday.
23

24 27. Based on information and belief, DEFENDANTS illegally rounded the start and end times
25 of employee meal periods resulting in PLAINTIFF and other Aggrieved Employees not being paid
26 for all time worked as well as late or shortened meal periods. Based on further information and
27 belief, DEFENDANTS did not have a written meal break policy, nor did DEFENDANTS have any
28 sort of compliant policy in practice.

1 28. PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had
2 actual or constructive knowledge that its time-rounding and auto-deduction policies and practices
3 resulted in the denial of meal periods owed PLAINTIFF and other Aggrieved Employees, in
4 violation of California's meal period laws.

5 29. DEFENDANTS never paid PLAINTIFF and other Aggrieved Employees an additional hour
6 of wages at their respective regular rates of pay for each workday a proper meal period was not
7 provided. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. DEFENDANTS
8 either failed to pay a meal period premium at all for each workday a proper meal period was not
9 provided or failed to pay the proper meal period premium for failure to incorporate all non-
10 discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift
11 differential pay into the regular rate for purposes of calculating the owed meal period premium.

12
13 **Rest Periods.**

14 30. DEFENDANTS failed to properly authorize and provide PLAINTIFF and other Aggrieved
15 Employees with lawful rest periods at a rate of every four (4) hours worked or major fraction
16 thereof.

17
18 31. PLAINTIFF and other Aggrieved Employees were not adequately informed, authorized,
19 instructed about, nor permitted an opportunity to take proper rest periods per California law.
20 Despite such conditions, PLAINTIFF and other Aggrieved Employees were required to sign off
21 on/state that they had taken rest periods when clocking out for the day, despite not being informed
22 or allowed to take compliant rest periods.

23
24 32. Any purported rest periods were interrupted, cut short, on duty, and/or late due to the nature
25 and constraints of PLAINTIFF's and other Aggrieved Employees' job duties and/or commentary
26 from supervisors pressuring them to skip rest periods completely or take non-compliant rest
27 periods. Moreover, PLAINTIFF and similarly Aggrieved Employees were instructed by their
28

1 supervisors to work through their rest periods due to lack of coverage and/or lack of available relief
2 workers to maintain the pace required of them.

3 33. DEFENDANTS pressured PLAINTIFF and other Aggrieved Employees to complete their
4 work duties according to a designated schedule such that rest periods were only taken once jobs
5 were completed/if time permitted.

6 34. DEFENDANTS had no policy in place nor instruction as to the taking, timing, or duty-free
7 nature of rest periods. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees
8 a rest period premium at the regular rate of compensation for any missed/unlawful rest period in
9 violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.
10

11 **Unpaid Minimum and Overtime Wages.**

12 35. DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees for all
13 hours worked by virtue of DEFENDANTS' automatic deduction and time rounding policies and
14 practices and failure to relieve Aggrieved Employees of all duties/employer control during unpaid
15 meal periods or otherwise unlawful practices for missed or improper meal periods.
16

17 36. PLAINTIFF and other Aggrieved Employees were consistently unable to take off duty,
18 thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal
19 periods due to the nature and constraints of their job duties and/or commentary from supervisors
20 pressuring PLAINTIFF and other Aggrieved Employees to take non-compliant meal breaks or skip
21 meal breaks completely. PLAINTIFF and similarly Aggrieved Employees were automatically
22 deducted 30 minutes or instructed by their supervisors to clock out for meal periods but to continue
23 working due to lack of coverage/lack of relief workers available. As such, PLAINTIFF and
24 Aggrieved Employees were not paid for this work time and were deprived of minimum and
25 overtime wages.
26

27 37. Based on further information and belief, DEFENDANTS rounded the start and end times of
28 Aggrieved Employees' meal periods and shift start and end times resulting in PLAINTIFF and

1 other Aggrieved Employees not being paid for all time worked, including minimum wages and
2 overtime wages to those Aggrieved Employees who worked more than eight (8) hours in a day or
3 more than forty hours in a week.

4 38. DEFENDANTS implemented a policy and/or practice of paying PLAINTIFF and Aggrieved
5 Employees for scheduled work hours only and not for the hours actually worked, despite having
6 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees worked
7 before/after and beyond scheduled hours. DEFENDANTS required and/or suffered or permitted
8 PLAINTIFF and other Aggrieved Employees to perform work prior to clocking in and after
9 clocking out for their shifts, resulting in the underpayment of minimum and overtime wages owed
10 to PLAINTIFF and other Aggrieved Employees.

12 39. Based on information and belief, DEFENDANTS had actual or constructive knowledge that
13 its time-rounding and auto-deduction policies and practices and failure to provide off-duty meal
14 periods, payment according to scheduled hours rather than actual hours worked/other off-the-clock
15 work policies and practices described above, resulted in the underpayment of minimum and
16 overtime wages owed to PLAINTIFF and other Aggrieved Employees, in violation of California's
17 minimum wage and overtime laws.

19 40. Based on information and belief, DEFENDANTS failed to pay proper overtime rates to
20 Aggrieved Employees due to DEFENDANTS' failure to incorporate all forms of non-discretionary
21 compensation, including but not limited to, shift differential pay and/or non-discretionary bonus
22 pay, into the regular pay rate for purposes of calculating the owed overtime rate, resulting in the
23 underpayment of overtime wages owed.

25 **Inaccurate Records.**

26 41. Based on the above-described unlawful policies and practices, DEFENDANTS failed and
27 continue to fail, to keep accurate and complete payroll records as required by Labor Code section
28 1174, 1198, 1199, and the applicable Wage Order, including Wage Order 5-2001, section 7.

1 42. DEFENDANTS failed and continues to fail to keep accurate and complete records showing
2 total hours worked by PLAINTIFF and similarly Aggrieved Employees by virtue of
3 DEFENDANTS' automatic meal break deductions, time rounding policies and practices, and other
4 off-the-clock work policies and practices described above.

5 43. DEFENDANTS further failed and continue to fail to keep accurate and complete records
6 showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and
7 similarly Aggrieved Employees of all duties and employer's control for unpaid meal periods,
8 resulting in unpaid hours worked and unaccounted for hours worked.

10 44. Moreover, DEFENDANTS failed and continue to fail, to record the true start and end times
11 of PLAINTIFF and similarly Aggrieved Employees' meal periods.

12 45. Standard Conditions of Labor violations. DEFENDANTS unlawful policies and practices
13 with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime
14 wages described herein result in separate violations of Labor Code Sections 1198 and 1199, which
15 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage
16 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,
17 and 1198, or order or ruling of the commission.

19 **Refusal to Make Payment.**

20 46. DEFENDANTS violated and continue to violate Labor Code section 216 by failing to pay
21 PLAINTIFF and all Aggrieved Employees for all hours worked at the proper wage rate and by
22 failing to pay PLAINTIFF and all Aggrieved Employees an additional hour of pay for each meal
23 or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31
24 Cal.App.4th 1137, 1154-1155.

26 **Statutory Wage Violations.**

27 47. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and
28 other Aggrieved Employees minimum wages and overtime wages which resulted in the payment

1 of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to
2 deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages,
3 to which they were entitled to under California law. Thus, DEFENDANTS violated Labor Code
4 section 223 by paying PLAINTIFF and other Aggrieved Employees lower wages than those they
5 were entitled to while purporting that PLAINTIFF.

6 **Unreimbursed Business Expenses.**

7
8 48. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
9 improperly required to provide and maintain work tools that are supposed to be DEFENDANTS'
10 responsibility.

11 49. Based on further information and belief, DEFENDANTS shifted their costs of doing
12 business onto PLAINTIFF and other Aggrieved Employees by requiring them to pay for its
13 business expenses, including but not limited to use of PLAINTIFF's mobile phone and data usage
14 and costs associated with the maintenance/purchase of uniforms/work clothing.

15
16 50. DEFENDANTS' failure to provide PLAINTIFF and other Aggrieved Employees with full
17 reimbursement for all reasonable expenses associated with carrying out their duties required that
18 PLAINTIFF and other Aggrieved Employees subsidize and/or carry the burden of business expenses
19 in violation of Labor Code section 2802 and the applicable Wage Order.

20 51. Inaccurate Wage Statements. During the relevant period, DEFENDANTS failed to provide
21 PLAINTIFF and the Aggrieved Employees with accurate wage statements that complied with
22 Labor Code section 226.

23
24 52. DEFENDANTS' wage statements that it provided to PLAINTIFF and all Aggrieved
25 Employees failed to indicate the "total hours worked" by the PLAINTIFF and all Aggrieved
26 Employees (by virtue of the automatic deduction for meal periods and time-rounding policies and
27 practices and other off-the-clock work policies and practices, all described in greater detail supra),
28 in violation of Labor Code section 226(a).

1 53. DEFENDANTS' wage statements further violate Labor Code section 226(a), by among
2 other things, failing to list the correct name and address of the legal entity that is the employer.

3 54. In addition, because of the violations detailed above, including not paying regular and
4 overtime wages for all hours worked and failing to provide meal and rest break premiums,
5 DEFENDANTS violated California Labor Code section 226 by willfully failing to furnish
6 PLAINTIFF and all Aggrieved Employees with accurate, itemized wage statements.

7 55. As a result, the wage statements provided to PLAINTIFF and all Aggrieved Employees were
8 not accurate and did not include all statutorily required information.

9 56. Sick Leave. Throughout the relevant time period, DEFENDANTS failed to provide proper
10 paid sick leave to PLAINTIFF and all Aggrieved Employees, due to DEFENDANTS' failure to
11 account for true actual hours worked (by virtue of DEFENDANTS' automatic deduction and time
12 rounding policies and practices and failure to pay for all hours worked, as described above) and
13 failure to incorporate all forms of non-discretionary compensation, including but not limited to,
14 non-discretionary bonus pay (such as, but not limited to, performance bonuses/bonuses for meeting
15 quotas) and/or shift differential pay, into the sick pay calculation and/or failure to provide paid sick
16 leave at all.

17 57. DEFENDANTS further failed to put PLAINTIFF and Aggrieved Employees on notice of
18 their paid sick leave rights thereby putting their entitlement to sick leave in a Labor Code section
19 2810.5 notice.

20 58. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the
21 balance of paid sick leave left to the Aggrieved Employees throughout the relevant time period.

22 59. Throughout the relevant period, DEFENDANTS failed to provide notice of the sick leave
23 balance amount left for PLAINTIFF and all Aggrieved Employees, and thus affecting their
24 informed exercise of their paid sick leave rights.

1 60. DEFENDANTS further failed and continue to fail to comply with Labor Code section 246,
2 by failing to providing PLAINTIFF all Aggrieved Employees, at the time wages are paid, with an
3 accurate Labor Code section 226 wage statement, or separate writing containing the amount of paid
4 sick leave available, or paid time off leave an employer provides in lieu of paid sick leave.

5 61. As such, DEFENDANTS unlawfully retained and continue to retain paid sick leave pay that
6 should have been paid and was not because of DEFENDANTS' failure to properly institute a paid
7 sick leave program. These unlawful policies and practices violate California's sick leave laws,
8 Labor Code section 245 et. seq, 246, and 247.5.

9
10 **Waiting Time.**

11 62. DEFENDANTS failed to timely pay PLAINTIFF and other Aggrieved Employees all wages
12 that were due and owing upon termination or resignation, in violation of Labor Code sections 201
13 or 202.

14 63. Upon separation of employment, PLAINTIFF's and other Aggrieved Employees' final
15 paychecks were not timely provided, and PLAINTIFF and other Aggrieved Employees' final
16 paychecks, once provided, did not include all wages owed, as they were devoid of certain wages
17 owed, such as, all owed minimum wages, all owed overtime wages, all owed sick leave wages
18 calculated and paid at the properly accrued rates, and all owed premium wages for noncompliant
19 meal or rest periods.

20
21 64. These violations subject DEFENDANTS to civil penalties under Labor Code section 203,
22 210, and/or 256.

23
24 65. Unlawful Agreements/ Background Checks. Based on information and belief,
25 DEFENDANTS required PLAINTIFF and similarly Aggrieved Employees to submit to an
26 unlawful criminal and/or financial background check as a condition of obtaining and/or holding
27 employment, in violation of Labor Code sections 1024.5 and 432.7.
28

1 66. Based on information and belief, DEFENDANTS also required PLAINTIFF and Other
2 Aggrieved Employees to agree in writing to a background check, which failed to abide by the
3 requirements set forth in CA Civil Code section 1786, et seq. and 15 U.S.C. section 1681, et seq.,
4 and was thus an unlawful background check.

5 67. Based on further information and belief, as a condition of obtaining employment,
6 DEFENDANTS required Aggrieved Employees to disclose criminal convictions/other criminal
7 history on their employment applications in violation of the California Fair Employment and
8 Housing Act and required Aggrieved Employees to sign off on these illegal background checks, in
9 violation of Labor Code section 432.5.
10

11 68. Based on further information and belief, DEFENDANTS knew that requiring PLAINTIFF
12 and Aggrieved Employees to agree to criminal and/or financial background checks as a condition
13 of obtaining and/or holding employment was unlawful.

14 69. Furthermore, based on information and belief, DEFENDANTS asked about arrests not
15 resulting in convictions on its employment application, in violation of California law. See Labor
16 Code section 432.7.
17

18 70. By having PLAINTIFF and other Aggrieved Employees sign off on the illegal background
19 checks, DEFENDANTS also violated Labor Code section 432.5 (stating that “no employer...shall
20 require any employee or applicant for employment to agree, in writing, to any term or condition
21 which is known by such employer...to be prohibited by law.”).

22 71. These violations subject DEFENDANTS to civil penalties under the Labor Code including
23 without limitation, sections 432.5, 432.7, and 2699.
24

25 72. Each violation of each Labor Code section and Wage Order provision suffered by
26 PLAINTIFF and by each Aggrieved Employee results in a separate civil penalty.

27 73. PLAINTIFF is informed and believes that DEFENDANTS engaged in these same unlawful
28 practices described herein with regard to all of the Aggrieved Employees.

**FIRST CAUSE OF ACTION
VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE SECTIONS 2698, ET SEQ.**

74. On behalf of Plaintiff, Aggrieved Employees, and the State of California against all Defendants, PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records.

75. California Labor Code § 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), § 7 similarly requires employers to keep time records reflecting the times (stop times and start times) during which each owed meal period was provided to each non-exempt employee each day.

76. As alleged above, DEFENDANTS failed, and continue to fail, to keep accurate and complete records as required by law. Upon information and belief, DEFENDANTS knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226 and 1174, and IWC Wage Order No. 5-2001, § 7, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

77. DEFENDANTS failure to keep “accurate and complete” payroll records for PLAINTIFF and similarly Aggrieved Employees violates Labor Code sections 1174, 1198, 1199, and Wage Order 5-2001, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each Aggrieved Employee, results in a separate civil penalty.¹

Meal Period Violations.

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

1 78. California law requires employers to provide employees a duty-free, uninterrupted thirty
2 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
3 must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
4 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker, supra*, 53 Cal.4th 1004.
5 Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute
6 meal period when an employee works more than (10) hours in a workday, and it must be provided
7 before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the
8 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but
9 no more than six (6) hours, the required meal period may be waived by mutual consent of the
10 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
11 but no more than twelve (12) hours, the required second meal period may be waived by mutual
12 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*
13 Liability for the Aggrieved Employees can be established by evidence that an employer adopted a
14 uniform corporate break policy that failed to give full effect to California law and the applicable
15 Wage Order requirements. The fact that employees may legally waive meal breaks does not affect
16 this result. *Ibid.*

17
18
19 79. Employers covered by any and all applicable IWC Wage Orders have an obligation to both
20 (1) relieve their employees for at least one meal period for shifts over five hours (see above), and
21 (2) to record having done so. If the employer fails to properly record a valid meal period, it is
22 presumed that no meal period was provided. IWC Wage Order 5-2001, section 7(A)(3) ("Meal
23 periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section
24 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a
25 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
26 provided").
27
28

1 80. Employers must pay employees an additional hour of wages at the employees' regular rate
2 of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal
3 period provided after five (5) hours, second meal period provided after 10 hours) meal period. Lab.
4 Code section 226.7; all applicable IWC Wage Orders, section 11(B) ("If an employer fails to
5 provide an employee a meal period in accordance with the applicable provisions of this order, the
6 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
7 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

8
9 81. As alleged above, DEFENDANTS have a consistent policy and/or practice of not providing
10 lawful first and second meal periods to PLAINTIFF and all Aggrieved Employees, nor providing
11 compensation in lieu thereof. Due to the assigned work schedule, nature and constraints of their job
12 duties, and/or commentary from supervisors, pressuring PLAINTIFF and Aggrieved Employees to
13 take late, non-complaint meal periods or skip them completely, PLAINTIFF and Aggrieved
14 Employees took their meal periods after the end of the fifth hour of work (or after the tenth hour
15 when working over ten hours), were interrupted, and/or were not relieved of all duties during meal
16 periods or were required to skip meal periods completely. Despite not receiving lawful first or
17 second meal periods, PLAINTIFF and Aggrieved Employees were instructed by management to
18 clock out for thirty minutes – for each meal period – but then, to continue working during those
19 thirty minutes, due to a lack of relief workers available. Based on information and belief,
20 DEFENDANTS moreover rounded the start and end times of Aggrieved Employees' meal periods
21 and/or automatically deducted thirty minutes per shift despite having actual and/or constructive
22 knowledge that PLAINTIFF and Aggrieved Employees did not receive compliant meal periods.

23
24 82. Despite not providing PLAINTIFF and other Aggrieved Employees with compliant meal
25 periods to which they were legally entitled, DEFENDANTS did not pay premiums for these missed
26 meal periods in violation of California law or failed to pay the proper meal period premium for
27
28

1 failure to incorporate all non-discretionary remuneration for purposes of calculating the owed meal
2 period premium.

3 83. These unlawful meal period policies and practices result in violations of Labor Code sections
4 226.7, 512, and 1198-1199, and IWC Wage Order 5-2001 (and all applicable wage orders), § 11.
5 These violations subject DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and
6 2699, and Wage Order 5-2001 (and all applicable wage orders), § 20. These practices result in
7 further violations such as violations of Labor Code § 1174 as discussed above, and other violations
8 discussed below.
9

10 **Rest Period Violations.**

11 84. California law requires employers to provide employees a paid, duty-free ten (10) minute
12 rest period for each four (4) hours worked, or major fraction thereof. See applicable IWC Wage
13 Order No. 5-2001, section 12(A). Employers must pay employees an additional hour of wages at
14 the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes,
15 interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code
16 section 226.7; IWC Wage Order No. 5-2001, section 12(B) ("If an employer fails to provide an
17 employee a rest period in accordance with the applicable provisions of this order, the employer
18 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
19 workday that the rest period is not provided").
20

21 85. At all times mentioned herein, DEFENDANTS knew and/or should have known that
22 PLAINTIFF and the Aggrieved Employees were entitled to be authorized and/or permitted to take
23 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
24 compensation at PLAINTIFF's and the Aggrieved Employees' regular rate of compensation when
25 they were not authorized and/or permitted to take a legally compliant rest period.
26

27 86. As explained above, DEFENDANTS did not properly authorize and permit PLAINTIFF and
28 other Aggrieved Employees to take lawful rest periods and any purported rest periods were

1 interrupted, cut short, on duty, and/or late due to the nature and constraints of their job duties,
2 pressure to complete work prior to taking a rest break, lack of coverage and/or lack of available
3 relief workers, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
4 Employees to skip rest breaks completely or otherwise take non-compliant rest breaks.

5 87. Despite not providing lawful rest breaks during the relevant time period, DEFENDANTS
6 failed to pay PLAINTIFF and other Aggrieved Employees with an additional hour of pay at
7 PLAINTIFF's and other Aggrieved Employees' regular rates of compensation for each missed or
8 improper rest period.
9

10 88. As such, DEFENDANTS willfully violated Labor Code sections 226.7, 512, and 1198-1199,
11 and IWC Wage Order 5-2001, §12. These violations subject DEFENDANTS to civil penalties
12 under Labor Code § 2699, and all applicable Wage Orders, §20.

13 **Minimum and Overtime Wage Violations.**

14 89. California law provides that employees in California must be paid for all hours worked, up
15 to 40 per week or 8 hours per day, at a regular rate that is no less than the mandated minimum wage.
16 See Labor Code section 1197 and the applicable Wage Order. The minimum wage standard applies
17 to each hour employees worked for which they were not paid. Therefore, an employer's failure to
18 pay for any particular hour worked by an employee is unlawful even if averaging an employee's
19 total pay over all hours worked, paid or not, results in an average hourly wage above minimum
20 wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.
21

22 90. California law also provides that employees in California must be paid overtime, equal to
23 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 per week or 8 per
24 day. See Labor Code 510 and the applicable Wage Order section 3. Employers must pay overtime
25 equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per
26 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
27 work in a work week. *Ibid.*
28

1 91. As alleged herein, PLAINTIFF and the Aggrieved Employees regularly worked minimum
2 and overtime hours for which they were not compensated as required by California law.
3 DEFENDANTS' automatic time deduction for meal periods, time rounding policies, failure to
4 accurately record all hours worked, failure to pay for actual hours worked, off-the-clock work, and
5 failure to relieve employees of all duties during purported meal periods resulted in unpaid minimum
6 wages, and unpaid overtime wages for those Aggrieved Employees that worked more than eight
7 (8) hours in a day or more than forty hours (40) in a week.

8
9 92. Moreover, DEFENDANTS failed to pay proper overtime rates to PLAINTIFF and
10 Aggrieved Employees for their failure to incorporate all forms of non-discretionary compensation,
11 including but not limited to, shift differential pay and/or non-discretionary bonus pay, into the
12 regular rate of compensation for purposes of calculating the owed overtime rate resulting in the
13 underpayment of overtime wages owed.

14
15 93. Based on information and belief, DEFENDANTS had actual or constructive knowledge that
16 its unlawful policies and practices, including but not limited to time-rounding and auto-deduction
17 policies/practices and failure to provide off-duty meal periods resulted in the underpayment of
18 minimum wages and overtime wages owed to PLAINTIFF and other Aggrieved Employees, in
19 violation of California's minimum and overtime wage laws.

20
21 94. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558,
22 558.1, 218.5, 1197.1, 1198, 1199, 2699, and Wage Order 5-2001 (and all applicable IWC Wage
23 Orders).

24 **Statutory Wage Violations.**

25 95. California Labor Code section 223 makes it unlawful for an employer to secretly pay wages
26 lower than required by statute while purporting to pay legal wages. As described above,
27 DEFENDANTS willfully and systematically denied PLAINTIFF and other Aggrieved Employees
28 minimum wage and overtime compensation which resulted in the payment of less than statutorily

1 required wages to them. DEFENDANTS acted with the intent to deprive them of statutory wages,
2 including, but not limited to, overtime wages and minimum wages, to which they were entitled to
3 under California law.

4 96. Thus, DEFENDANTS paid PLAINTIFF and all Aggrieved Employees lower wages than
5 those they were entitled to while purporting that PLAINTIFF and all Aggrieved Employees were
6 properly paid. PLAINTIFF and all Aggrieved Employees are entitled to recover penalties,
7 attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).
8

9 **Refusal to Make Payment.**

10 97. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
11 payable and/or denial of the validity of any claim to wages due. DEFENDANTS violated and
12 continue to violate Labor Code section 216 by failing to pay PLAINTIFF and all Aggrieved
13 Employees for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all
14 Aggrieved Employees an additional hour of pay for each meal or rest period not provided or that
15 was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.
16

17 98. These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5.
18 Each violation results in a separate civil penalty, for each Aggrieved Employee, for each pay period
19 during which the statute provisions were violated.

20 **Business Expense Violations.**

21 99. California law requires employers to indemnify their employees for all necessary
22 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
23 their obedience to the directions of the employer. See Cal. Lab. Code section 2802(a) and all
24 applicable Wage Orders, section 9 (b). Furthermore, "for purposes of [section 2802], the term
25 'necessary expenditure or losses' shall include all reasonable costs, including, but not limited to,
26 attorneys' fees incurred by the employee enforcing the rights granted by this section."
27
28

1 100. Among other things, under California law, when tools or equipment are required by the
2 employer or are necessary to the performance of a job, such tools and equipment shall be provided
3 and maintained by employer, except that an employee whose wages are at least two (2) times the
4 minimum wage provided herein may be required to provide and maintain hand tools and equipment
5 customarily required by the trade or craft. See applicable IWC Wage Order, section 9 subsection
6 (b).

7
8 101. Among other things, under California law, when employees must use their personal
9 cellphones for work-related purposes, the employer must reimburse them for a reasonable
10 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
11 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
12 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
13 Id. 1144-1145. California law also requires employers to reimburse employees for automobile
14 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
15 and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further,
16 "any contract or agreement, express or implied, made by any employee to waive the benefits of this
17 article or any part thereof, is null and void, and this article shall not deprive any employee or his
18 personal representative of any right or remedy to which he is entitled to under the laws of this
19 State." See Cal. Lab. Code section 2804.

20
21 102. As a pattern and practice, DEFENDANTS failed to reimburse and indemnify PLAINTIFF
22 and other Aggrieved Employees for business expenses. Pursuant to California Labor Code section
23 2802, PLAINTIFF and other Aggrieved Employees were entitled to be reimbursed for all
24 reasonable expenses associated with carrying out orders by their employer and/or carrying out the
25 duties assigned by their employers including but not limited to the costs associated with use of their
26 personal cell phones and data plan usage, and costs associated with the maintenance and/or
27 purchase of work uniforms/ clothing.
28

1 103. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
2 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
3 Code § 2802 and the applicable Wage Order. In turn, there constitutes a PAGA violation based on
4 a violation of California Labor Code § 2802 and the applicable Wage Order.

5 **Wage Statement Violations.**

6 104. California law requires every employer semi-monthly or at the time of each payment of
7 wages to furnish each of his or her employees with an accurate itemized wage statement in writing
8 that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3)
9 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
10 piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for
11 which the employee is paid; (7) the name of the employee and only the last four digits of his or her
12 social security number or an employee identification number other than a social security number;
13 (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates
14 in effect during the pay period and the corresponding number of hours worked at each hourly rate
15 by the employee. Cal. Lab. Code. section 226(a).
16
17

18 105. DEFENDANTS issues wage statements to PLAINTIFF and all Aggrieved Employees that
19 failed to indicate the “total hours worked” by the PLAINTIFF and Aggrieved Employees (by virtue
20 of the automatic deduction for meal periods and time-rounding policies and practices and other off-
21 the-clock work policies and practices, all described in greater detail supra), in violation of Labor
22 Code section 226(a).
23

24 106. DEFENDANTS’ wage statements further violate Labor Code section 226(a), by among
25 other things, failing to list the name and address of the legal entity that is the employer.

26 107. In addition, because of the violations detailed above, including not paying regular and
27 overtime wages for all hours worked and failing to provide meal and rest break premiums,
28

1 DEFENDANTS violated California Labor Code section 226 by willfully failing to furnish
2 PLAINTIFF and all Aggrieved Employees with accurate, itemized wage statements.

3 108. DEFENDANTS failed to provide accurate wage statements with respect to multiple
4 categories set forth in Labor Code section 226, causing confusion to PLAINTIFF and Aggrieved
5 Employees over whether they received all wages owed to them and cause confusion as to the name
6 and address of the entity that is the employer. PLAINTIFF and Aggrieved Employees were injured
7 by DEFENDANTS' failure to provide accurate wage statements. As a result, these violations
8 subject DEFENDANTS to civil penalties under Labor Code § 226.3. Each violation results in a
9 separate civil penalty, for each Aggrieved Employee, for each pay period during which the statute
10 provisions were violated.
11

12 **Standard Conditions of Labor Violations.**

13 109. Together, Labor Code sections 1198 and 1199 make unlawful any employment of any
14 employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
15 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections
16 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS' violations
17 with respect to meal periods, rest periods, record keeping provisions, and minimum/overtime wages
18 result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil
19 penalties under Labor Code sections 1197.1 and 2699.
20

21 **Sick Leave Violations.**

22 110. Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick
23 leave to PLAINTIFF and all Aggrieved Employees, due to DEFENDANTS' failure to account for
24 true actual hours worked (by virtue of DEFENDANTS' automatic deduction and time rounding
25 policies and practices and failure to pay for all hours worked, as described above) and failure to
26 incorporate all forms of non-discretionary compensation, including but not limited to, non-
27 discretionary bonus pay (such as, but not limited to, performance bonuses/bonuses for meeting
28

1 quotas) and or shift differential pay, into the sick pay calculation and/or failure to provide paid sick
2 leave at all.

3 111. DEFENDANTS further failed to put Aggrieved Employees on notice of their paid sick
4 leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5
5 notice.

6 112. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the
7 balance of paid sick leave left to the Aggrieved Employees throughout the relevant time period.

8 113. Throughout the relevant time period, DEFENDANTS failed to provide notice of sick leave
9 amount balance left for PLAINTIFF and all Aggrieved Employees, and thus affecting their
10 intelligent exercise of their paid sick leave.

11 114. DEFENDANTS further failed and continues to fail to comply with Labor Code section
12 246, by providing PLAINTIFF all Aggrieved Employees with a Labor Code section 226 wage
13 statement, or separate writing containing amount of paid sick leave available, or paid time off leave
14 an employer provides in lieu of sick leave, at the time it pays wages.

15 115. But for this failure, PLAINTIFF and all Aggrieved Employees would have used their paid
16 sick leave at least prior to their respective separation, for as on several occasions thereafter, he or
17 she would have been entitled to use the banked sick leave and earn appropriate compensation.

18 116. This illegal retention of paid sick leave is unlawful and PLAINTIFF seeks all forms of
19 injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of
20 PLAINTIFF and all Aggrieved Employees.

21 117. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
22 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
23 Aggrieved Employees, permitting the presumption that PLAINTIFF all Aggrieved Employees were
24 entitled to the maximum number of hours accruable under this article at the time of his or her
25 termination.

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

5 119. Accordingly, PLAINTIFF and other Aggrieved Employees are entitled to injunctive relief,
6 attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF
7 requests all relief pursuant to the aforementioned code provisions, including but not limited to
8 Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.
9

10 **Untimely Payment of Final Wages.**

11 120. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer
12 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an
14 employee not having a written contract for a definite period quits his or her employment, his or her
15 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
16 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
17 to his or her wages at the time of quitting."
18

19 121. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an
20 employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal
21 to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. Case
22 law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
23 section 256. *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348; *Caliber*
24 *Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365.
25

26 122. Upon separation of employment, PLAINTIFF's and other Aggrieved Employees' final
27 paychecks were not timely provided, and PLAINTIFF's and other Aggrieved Employees' final
28 paychecks, once provided, did not include all wages owed, as they were devoid of certain wages

1 owed, such as, all minimum and overtime wages, all owed premium wages for noncompliant meal
2 or rest periods, and all owed sick leave wages at the properly accrued rates.

3 123. These violations subject DEFENDANTS to civil penalties under Labor Code sections 203,
4 210, and/or 256. Each violation results in a separate civil penalty, for each Aggrieved Employee
5 for each pay period during which the statute provisions were violated.

6 **Unlawful Agreements/ Background Check Violations**

7
8 124. The California Labor Code places certain procedural and substantive limits on employers'
9 ability to conduct employee background checks and on how employers can use the information
10 they obtain through those background checks. Labor Code section 1024.5 states that employers,
11 except for financial institutions, may order a credit check only if the individual works (or is applying
12 to work) in certain positions (e.g., managerial positions, financially-related positions, and certain
13 government positions). Labor Code section 432.7 prohibits an employer from asking applicants
14 about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply.
15 Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section
16 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate
17 several requirements prior to and following an employee background check, including but not
18 limited to identifying an appropriate reason for the background check, a separate consent form with
19 required disclosures and certain formatting requirements, additional forms such as a summary of
20 rights, as well as proper notice of adverse actions taken, among other statutory requirements.

21
22 125. Based on information and belief, DEFENDANTS required PLAINTIFF and other
23 Aggrieved Employees to submit to unlawful criminal and/or financial background checks as a
24 condition of obtaining and/or holding employment in violation of Labor Code section 1024.5 and
25 Labor Code section 432.7. DEFENDANTS also required PLAINTIFF and other Aggrieved
26 Employees to agree in writing to a background check which failed to abide by the requirements set
27
28

1 forth in CA Civil Code section 1786, et seq., and/or 15 U.S.C. section 1681, et seq., and thus was
2 an unlawful background check

3 126. Based on further information and belief, as a condition of obtaining employment,
4 DEFENDANTS required Aggrieved Employees to disclose criminal convictions/other criminal
5 history on their employment applications in violation of the California Fair Employment and
6 Housing Act and required Aggrieved Employees to sign off on these illegal background checks, in
7 violation of Labor Code section 432.5.
8

9 127. Based on further information and belief, DEFENDANTS knew that requiring PLAINTIFF
10 and Aggrieved Employees to agree to these criminal and/or financial background checks as a
11 condition of obtaining and/or holding employment was unlawful.

12 128. Furthermore, based on information and belief, DEFENDANTS asked about arrests not
13 resulting in convictions on its employment application, in violation of Labor Code section 432.7.
14

15 129. By requiring PLAINTIFF and other Aggrieved Employees sign off on the illegal
16 background checks, DEFENDANTS also violated Labor Code section 432.5 (stating that “no
17 employer...shall require any employee or applicant for employment to agree, in writing, to any
18 term or condition which is known by such employer...to be prohibited by law.”).

19 130. Under the provisions of PAGA and the above-mentioned Labor Code sections, including
20 but not limited to Labor Code sections 201, 202, 203, 210, 226, 226.3, 226.7, 245, 247, 248, 248.5,
21 256, 432.5, 510, 512, 558, 558.1, 1174, 1174.5, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802,
22 2810.5 and all applicable Wage Orders as well as all interpretations of these laws by California
23 Courts and administrative bodies, as well as any other law that is enforceable through PAGA,
24 DEFENDANTS are liable for the following penalties:
25

- 26 a. All statutorily-specified penalties recoverable under PAGA as enumerated in
27 the relevant California Labor Code provisions listed herein only if permitted by the
28 PAGA statute, pursuant to Labor Code section 2699(a); and

b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code section 2699(f).

131. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against Plaintiff or any Aggrieved Employee, whether a party to this action or not.

132. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of herself, the State of California, and the Aggrieved Employees:

1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For reasonable attorney's fees and costs of suit; and
3. For such other and further relief that the Court deems just and proper.

Dated: January 26, 2022,

CROSNER LEGAL, PC

By:

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EXHIBIT "1"



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October 20, 2021

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NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
GNIMGT, Inc.
Date: October 20, 2021
Subject: *Eugenia Calva Garcia v. GNIMGT, Inc. d/b/a Good Nite Inn*

Introduction

This office represents COMPLAINANT, Eugenia Calva Garcia (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following

entities and individual managing agents of said entity: GNIMGT, Inc. (hereinafter referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

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

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

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

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

**The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED
EMPLOYEES**

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

COMPLAINANT is informed and believes and thereon alleges that at all relevant times GNIMGT, Inc. and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT is informed and believes and hereon asserts that GNIMGT, Inc. and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT.

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

Individual Liability Under Labor Code Section 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated COMPLAINANT and other AGGRIEVED EMPLOYEES’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “a natural person who is an owner, director, officer, or managing agent of the employer.” The “managing agent” definition mirrors that found in California’s punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and

judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, and 1194 as further described in detail below.

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

General Information

GNIMGT, Inc. d/b/a Good Nite Inn and its managing agents own, operate, or otherwise manage companies that operate hotels throughout California. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER, at EMPLOYER's Good Nite Inn location in Sylmar, California, as a housekeeper from in or about June 2010 until COMPLAINANT's last day worked in or about December 2020. COMPLAINANT and similarly AGGRIEVED EMPLOYEES typically worked approximately eight (8) to ten hours per day, three (3) to five (5) days per week. COMPLAINANT and similarly AGGRIEVED EMPLOYEES worked as housekeepers. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were paid on an hourly basis. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were also paid non-discretionary bonuses. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were hourly paid, non-exempt employees.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay employees at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to provide COMPLAINANT and similarly AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and similarly AGGRIEVED EMPLOYEES an additional hour of premium pay for missed/improper meal and/or rest periods; (5) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and similarly AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (6) failed and continues to fail to place COMPLAINANT and similarly AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (7) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and similarly

AGGRIEVED EMPLOYEES; (8) made unlawful deductions from COMPLAINANT and similarly AGGRIEVED EMPLOYEES' paychecks; (9) failed and continues to fail to timely pay wages to COMPLAINANT and similarly AGGRIEVED EMPLOYEES during employment and upon separation of employment; (10) failed and continues to fail to reimburse COMPLAINANT and similarly AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (11) conducts illegal background checks as a condition of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' hire or maintaining their employment; and (12) requires COMPLAINANT and similarly AGGRIEVED EMPLOYEES to impermissibly disclose arrests on their employment applications and sign off on same. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. IWC Wage Order 5-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

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

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

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

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

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 5-2001, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

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

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

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

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

COMPLAINANT and similarly AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and or work through part or all their meal periods due to the nature and constraints of their job duties, lack of relief workers available, and or commentary from supervisors pressuring them to take meal periods past the fifth hour of work or to otherwise take noncompliant meal periods or skip meal periods completely in order to complete cleaning the 23 rooms assigned to COMPLAINANT and similarly AGGRIEVED EMPLOYEES.

EMPLOYER was informed of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' inability to take compliant meal periods due to their workloads/lack of relief workers available because COMPLAINANT and similarly AGGRIEVED EMPLOYEES so informed EMPLOYER. EMPLOYER failed to take any action to remedy the situation. EMPLOYER failed to relieve COMPLAINANT and similarly AGGRIEVED EMPLOYEES by having staff available to relieve them so that they could remain on pace to clean their assigned number of rooms within DEFENDANT's designated time frames.

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

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

AGGRIEVED EMPLOYEES did not receive a compliant thirty-minute meal break before the end of the tenth hour of work when working more than ten hours in a workday.

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

Based on information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

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

EMPLOYER never paid COMPLAINANT and other AGGRIEVED EMPLOYEES an additional hour of wages at their respective regular rates of pay for each workday a proper meal period was not provided. *Brinker, supra*, 53 Cal.4th 1004. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of five and one half (5 ½) hours or more. COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive a single compliant thirty-minute meal break. EMPLOYER did not provide COMPLAINANT and other AGGRIEVED EMPLOYEES with proper meal breaks. After five (5) hours of work, COMPLAINANT and other AGGRIEVED EMPLOYEES would be required to

work through their meal periods. Despite not providing COMPLAINANT and other AGGRIEVED EMPLOYEES with the meal breaks to which they were legally entitled, EMPLOYER did not pay any premiums for these missed meal breaks in violation of California law or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, IWC Wage Order No. 5-2001, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order No. 5-2001, section 12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code section 226.7; IWC Wage Order No. 5-2001, section 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided").

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Despite such conditions, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to sign off on/state that they had taken rest periods when clocking out for the day, despite not being informed or allowed to take compliant rest periods.

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, section 20 (establishing that "in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Any purported rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties and or commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant rest breaks. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to work through their rest periods due to lack of coverage/lack of relief workers available.

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

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

³ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 5-2001, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors pressuring COMPLAINANT and other AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to lack of coverage/lack of relief workers available.

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

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

EMPLOYER implemented a policy and practice of paying COMPLAINANT and AGGRIEVED EMPLOYEES for scheduled work hours only and not the hours actually worked by COMPLAINANT and AGGRIEVED EMPLOYEES, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES worked before/after and beyond scheduled hours. EMPLOYER required and or suffered or permitted COMPLAINANT and other AGGRIEVED EMPLOYEE to perform work prior to clocking in and after clocking out for their shifts, resulting in the underpayment of minimum wages owed to COMPLAINANT and other AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices and failure to provide off-duty meal periods, payment according to scheduled hours rather than actual hours worked/other off-the-clock work policies and practices described above, resulted in the underpayment of minimum wages owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage

Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; IWC Wage Order 5-2001, section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

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

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

Based on information and belief, EMPLOYER failed to pay proper overtime rates to AGGRIEVED EMPLOYEES due to EMPLOYER's failure to incorporate all forms of non-discretionary compensation, including but not limited to, shift differential pay and or non-discretionary bonus pay, into the regular pay rate for purposes of calculating the owed overtime rate, resulting in the underpayment of overtime wages owed.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

⁴ See Lab. Code section 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all AGGRIEVED EMPLOYEES, due to EMPLOYER's failure to account for true actual hours worked (by virtue of EMPLOYER's automatic deduction and time rounding policies and practices and failure to pay for all hours worked, as described above) and failure to incorporate all forms of non-discretionary compensation, including but not limited to, non-discretionary bonus pay (such as, but not limited to, performance bonuses/bonuses for meeting quotas) and or shift pay differential pay, into the sick pay calculation and or failure to provide paid sick leave at all.

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

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

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

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

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

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

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

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

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

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁶

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

⁶ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

EMPLOYER's wage statements that it provided to COMPLAINANT and all AGGRIEVED EMPLOYEES failed to indicate the "total hours worked" by the COMPLAINANT and all AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods and time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*).

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

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

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

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

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

Thus, EMPLOYER paid COMPLAINANT and all AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

⁷ See Lab. Code section 226.3 (establishing that the civil penalty is "per employee per violation").

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

EMPLOYER failed to timely pay COMPLAINANT and other AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation.

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁸

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

Among other things, under California law, when 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 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. See applicable IWC Wage Order, section 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their

⁸ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code section 2804.

Based on information and belief, COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto COMPLAINANT and other AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to use of COMPLAINANT’s mobile phone and data usage and uniforms/work clothing.

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, costs associated with the maintenance/purchase of uniforms/work clothing.

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

Background Check Violations: The California Labor Code places certain procedural and substantive limits on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate

reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, as well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

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

Conclusion

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

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

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC

EXHIBIT "2"



CROSNER LEGAL

Public Interest Rights

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November 17, 2021

VIA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

GNIMGT, Inc.
Nicholas Ho, Agent for Service of Process
11500 West Olympic Blvd, Suite 345
Los Angeles, CA 90064

Good-Nite Inn, Inc.
Nicholas Ho, Agent for Service of Process
11500 West Olympic Blvd, Suite 345
Los Angeles, CA 90064

Good Nite Inn Sylmar, Inc.
Nicholas Ho, Agent for Service of Process
11500 West Olympic Blvd, Suite 345
Los Angeles, CA 90064

AMENDED NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
GNIMGT, Inc., Good-Nite Inn, Inc., and Good Nite Inn Sylmar, Inc.
Date: November 17, 2021
Subject: *Eugenia Calva de Garcia v. GNIMGT, Inc. d/b/a Good Nite Inn, Good-Nite Inn, Inc., and Good Nite Inn Sylmar, Inc.; LWDA Case No.: LWDA-CM-849251-21*

Introduction

This office represents COMPLAINANT, Eugenia Calva de Garcia (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: GNIMGT, Inc.; Good-Nite Inn, Inc.; and Good Nite Inn Sylmar, Inc. (hereinafter referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all non-exempt employees employed by EMPLOYER within one year of the date of the original notice assigned case number LWDA-CM-849251-21 (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent(s) for Service of Process as provided to the California Secretary of State.

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

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

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as

written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

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

COMPLAINANT is informed and believes and thereon alleges that at all relevant times GNIMGT, Inc. and Good-Nite Inn, Inc.; and Good Nite Inn Sylmar, Inc. and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT is informed and believes and hereon asserts that GNIMGT, Inc. and Good-Nite Inn, Inc.; and Good Nite Inn Sylmar, Inc. and unknown entities must be classified as joint employers of COMPLAINANT and other AGGRIEVED EMPLOYEES for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT and other AGGRIEVED EMPLOYEES at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and other AGGRIEVED EMPLOYEES.

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

Individual Liability Under Labor Code Section 558.1

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

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

General Information

EMPLOYER and its managing agents own, operate, or otherwise manage companies that operate Good Nite Inn hotels throughout California. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER, at EMPLOYER's Good Nite Inn location in Sylmar, California, as a housekeeper from in or about June 2010 until COMPLAINANT's last day worked in or about December 2020. COMPLAINANT and similarly AGGRIEVED EMPLOYEES typically worked approximately eight (8) to ten hours per day, three (3) to five (5) days per week. COMPLAINANT and similarly AGGRIEVED EMPLOYEES worked as housekeepers. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were paid on an hourly basis. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were also paid non-discretionary bonuses. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were hourly paid, non-exempt employees.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay employees at least minimum wage for all hours

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

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. IWC Wage Order 5-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

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

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

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

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

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 5-2001, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

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

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

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

COMPLAINANT and similarly AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and or work through part or all their meal periods due to the nature and constraints of their job duties, lack of relief workers available, and or commentary from supervisors pressuring them to take meal periods past the fifth hour of work or to otherwise take

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

noncompliant meal periods or skip meal periods completely in order to complete cleaning the 23 rooms assigned to COMPLAINANT and similarly AGGRIEVED EMPLOYEES.

EMPLOYER was informed of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' inability to take compliant meal periods due to their workloads/lack of relief workers available because COMPLAINANT and similarly AGGRIEVED EMPLOYEES so informed EMPLOYER. EMPLOYER failed to take any action to remedy the situation. EMPLOYER failed to relieve COMPLAINANT and similarly AGGRIEVED EMPLOYEES by having staff available to relieve them so that they could remain on pace to clean their assigned number of rooms within DEFENDANT's designated time frames.

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

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

AGGRIEVED EMPLOYEES did not receive a compliant thirty-minute meal break before the end of the tenth hour of work when working more than ten hours in a workday.

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

Based on information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

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

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

premium at all for each workday a proper meal period was not provided or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of five and one half (5 ½) hours or more. COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive a single compliant thirty-minute meal break. EMPLOYER did not provide COMPLAINANT and other AGGRIEVED EMPLOYEES with proper meal breaks. After five (5) hours of work, COMPLAINANT and other AGGRIEVED EMPLOYEES would be required to work through their meal periods. Despite not providing COMPLAINANT and other AGGRIEVED EMPLOYEES with the meal breaks to which they were legally entitled, EMPLOYER did not pay any premiums for these missed meal breaks in violation of California law or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, IWC Wage Order No. 5-2001, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order No. 5-2001, section 12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code section 226.7; IWC Wage Order No. 5-2001, section 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided").

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Despite such conditions, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to sign off on/state that they had taken rest periods when clocking out for the day, despite not being informed or allowed to take compliant rest periods.

Any purported rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties and or commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant rest breaks. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to work through their rest periods due to lack of coverage/lack of relief workers available.

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

³ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 5-2001, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors pressuring COMPLAINANT and other AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to lack of coverage/lack of relief workers available.

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

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

EMPLOYER implemented a policy and practice of paying COMPLAINANT and AGGRIEVED EMPLOYEES for scheduled work hours only and not the hours actually worked by COMPLAINANT and AGGRIEVED EMPLOYEES, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES worked before/after and beyond scheduled hours. EMPLOYER required and or suffered or permitted COMPLAINANT and other AGGRIEVED EMPLOYEE to perform work prior to clocking in and after clocking out for their shifts, resulting in the underpayment of minimum wages owed to COMPLAINANT and other AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices and failure to provide off-duty meal periods, payment according to scheduled hours rather than actual hours worked/other off-the-clock work policies and practices described above, resulted in the underpayment of minimum wages owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; IWC Wage Order 5-2001, section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

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

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

Based on information and belief, EMPLOYER failed to pay proper overtime rates to AGGRIEVED EMPLOYEES due to EMPLOYER's failure to incorporate all forms of non-discretionary compensation, including but not limited to, shift differential pay and or non-discretionary bonus pay, into the regular pay rate for purposes of calculating the owed overtime rate, resulting in the underpayment of overtime wages owed.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties

⁴ See Lab. Code section 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all AGGRIEVED EMPLOYEES, due to EMPLOYER's failure to account for true actual hours worked (by virtue of EMPLOYER's automatic deduction and time rounding policies and practices and failure to pay for all hours worked, as described above) and failure to incorporate all forms of non-discretionary compensation, including but not limited to, non-discretionary bonus pay (such as, but not limited to, performance bonuses/bonuses for meeting quotas) and or shift pay differential pay, into the sick pay calculation and or failure to provide paid sick leave at all.

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

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

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

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

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

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

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

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

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

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

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by

⁶ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226.

EMPLOYER's wage statements that it provided to COMPLAINANT and all AGGRIEVED EMPLOYEES failed to indicate the "total hours worked" by the COMPLAINANT and all AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods and time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*).

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

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

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

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

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other AGGRIEVED EMPLOYEES minimum wage and overtime compensation which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to

⁷ See Lab. Code section 226.3 (establishing that the civil penalty is "per employee per violation").

deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

EMPLOYER failed to timely pay COMPLAINANT and other AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation.

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁸

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

Among other things, under California law, when 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

⁸ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

maintained by 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. *See* applicable IWC Wage Order, section 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See* Cal. Lab. Code section 2804.

Based on information and belief, COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto COMPLAINANT and other AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to use of COMPLAINANT's mobile phone and data usage and uniforms/work clothing.

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, costs associated with the maintenance/purchase of uniforms/work clothing.

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

Background Check Violations: The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how

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

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

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

Based on further information and belief, as a condition of obtaining employment, EMPLOYER required AGGRIEVED EMPLOYEES to disclose criminal convictions/other criminal history on their employment applications in violation of the California Fair Employment and Housing Act and required AGGRIEVED EMPLOYEES to sign off on these illegal background checks, in violation of Labor Code section 432.5.

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

Furthermore, based on information and belief, EMPLOYER asked about arrests not resulting in convictions on its employment application, in violation of California law. See Labor Code section 432.7.

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

EMPLOYER has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties COMPLAINANT and other AGGRIEVED

EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Conclusion

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,



Zachary M. Crosner, Esq.
CROSNER LEGAL, PC

EXHIBIT "3"



CROSNER LEGAL

Public Interest Rights

Zachary Crosner, Esq.
Managing Attorney
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zach@crosnerlegal.com
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fax: (310) 510-6429

November 19, 2021

VIA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

GNIMGT, Inc.
Nicholas Ho, Agent for Service of Process
11500 West Olympic Blvd, Suite 345
Los Angeles, CA 90064

Good-Nite Inn, Inc.
Nicholas Ho, Agent for Service of Process
11500 West Olympic Blvd, Suite 345
Los Angeles, CA 90064

Good Nite Inn Sylmar, Inc.
Nicholas Ho, Agent for Service of Process
11500 West Olympic Blvd, Suite 345
Los Angeles, CA 90064

AMENDED NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
GNIMGT, Inc., Good-Nite Inn, Inc., and Good Nite Inn Sylmar, Inc.
Date: November 19, 2021
Subject: *Eugenia Calva de Garcia v. GNIMGT, Inc. d/b/a Good Nite Inn, Good-Nite Inn, Inc., and Good Nite Inn Sylmar, Inc.; LWDA Case No.: LWDA-CM-849251-21*

Introduction

This office represents COMPLAINANT, Eugenia Calva de Garcia (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: GNIMGT, Inc.; Good-Nite Inn, Inc.; and Good Nite Inn Sylmar, Inc. (hereinafter referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all non-exempt employees employed by EMPLOYER within one year of the date of the original notice assigned case number LWDA-CM-849251-21 (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent(s) for Service of Process as provided to the California Secretary of State.

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

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

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as

written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

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

COMPLAINANT is informed and believes and thereon alleges that at all relevant times GNIMGT, Inc. and Good-Nite Inn, Inc.; and Good Nite Inn Sylmar, Inc. and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT is informed and believes and hereon asserts that GNIMGT, Inc. and Good-Nite Inn, Inc.; and Good Nite Inn Sylmar, Inc. and unknown entities must be classified as joint employers of COMPLAINANT and other AGGRIEVED EMPLOYEES for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT and other AGGRIEVED EMPLOYEES at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and other AGGRIEVED EMPLOYEES.

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

Individual Liability Under Labor Code Section 558.1

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

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

General Information

EMPLOYER and its managing agents own, operate, or otherwise manage companies that operate Good Nite Inn hotels throughout California. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER, at EMPLOYER's Good Nite Inn location in Sylmar, California, as a housekeeper from in or about June 2010 until COMPLAINANT's last day worked in or about December 2020. COMPLAINANT and similarly AGGRIEVED EMPLOYEES typically worked approximately eight (8) to ten hours per day, three (3) to five (5) days per week. COMPLAINANT and similarly AGGRIEVED EMPLOYEES worked as housekeepers. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were paid on an hourly basis. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were also paid non-discretionary bonuses. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were hourly paid, non-exempt employees.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay employees at least minimum wage for all hours

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

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. IWC Wage Order 5-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

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

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

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

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

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 5-2001, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

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

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

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

COMPLAINANT and similarly AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and or work through part or all their meal periods due to the nature and constraints of their job duties, lack of relief workers available, and or commentary from supervisors pressuring them to take meal periods past the fifth hour of work or to otherwise take

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

noncompliant meal periods or skip meal periods completely in order to complete cleaning the 23 rooms assigned to COMPLAINANT and similarly AGGRIEVED EMPLOYEES.

EMPLOYER was informed of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' inability to take compliant meal periods due to their workloads/lack of relief workers available because COMPLAINANT and similarly AGGRIEVED EMPLOYEES so informed EMPLOYER. EMPLOYER failed to take any action to remedy the situation. EMPLOYER failed to relieve COMPLAINANT and similarly AGGRIEVED EMPLOYEES by having staff available to relieve them so that they could remain on pace to clean their assigned number of rooms within DEFENDANT's designated time frames.

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

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

AGGRIEVED EMPLOYEES did not receive a compliant thirty-minute meal break before the end of the tenth hour of work when working more than ten hours in a workday.

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

Based on information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

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

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

premium at all for each workday a proper meal period was not provided or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of five and one half (5 ½) hours or more. COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive a single compliant thirty-minute meal break. EMPLOYER did not provide COMPLAINANT and other AGGRIEVED EMPLOYEES with proper meal breaks. After five (5) hours of work, COMPLAINANT and other AGGRIEVED EMPLOYEES would be required to work through their meal periods. Despite not providing COMPLAINANT and other AGGRIEVED EMPLOYEES with the meal breaks to which they were legally entitled, EMPLOYER did not pay any premiums for these missed meal breaks in violation of California law or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, IWC Wage Order No. 5-2001, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order No. 5-2001, section 12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code section 226.7; IWC Wage Order No. 5-2001, section 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided").

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Despite such conditions, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to sign off on/state that they had taken rest periods when clocking out for the day, despite not being informed or allowed to take compliant rest periods.

Any purported rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties and or commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant rest breaks. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to work through their rest periods due to lack of coverage/lack of relief workers available.

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

³ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 5-2001, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors pressuring COMPLAINANT and other AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to lack of coverage/lack of relief workers available.

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

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

EMPLOYER implemented a policy and practice of paying COMPLAINANT and AGGRIEVED EMPLOYEES for scheduled work hours only and not the hours actually worked by COMPLAINANT and AGGRIEVED EMPLOYEES, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES worked before/after and beyond scheduled hours. EMPLOYER required and or suffered or permitted COMPLAINANT and other AGGRIEVED EMPLOYEE to perform work prior to clocking in and after clocking out for their shifts, resulting in the underpayment of minimum wages owed to COMPLAINANT and other AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices and failure to provide off-duty meal periods, payment according to scheduled hours rather than actual hours worked/other off-the-clock work policies and practices described above, resulted in the underpayment of minimum wages owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; IWC Wage Order 5-2001, section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

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

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

Based on information and belief, EMPLOYER failed to pay proper overtime rates to AGGRIEVED EMPLOYEES due to EMPLOYER's failure to incorporate all forms of non-discretionary compensation, including but not limited to, shift differential pay and or non-discretionary bonus pay, into the regular pay rate for purposes of calculating the owed overtime rate, resulting in the underpayment of overtime wages owed.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties

⁴ See Lab. Code section 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all AGGRIEVED EMPLOYEES, due to EMPLOYER's failure to account for true actual hours worked (by virtue of EMPLOYER's automatic deduction and time rounding policies and practices and failure to pay for all hours worked, as described above) and failure to incorporate all forms of non-discretionary compensation, including but not limited to, non-discretionary bonus pay (such as, but not limited to, performance bonuses/bonuses for meeting quotas) and or shift pay differential pay, into the sick pay calculation and or failure to provide paid sick leave at all.

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

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

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

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

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

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

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

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

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

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

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by

⁶ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

EMPLOYER's wage statements that it provided to COMPLAINANT and all AGGRIEVED EMPLOYEES failed to indicate the "total hours worked" by the COMPLAINANT and all AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods and time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*), a violation of Labor Code section 226(a).

EMPLOYER's wage statements further violate Labor Code section 226(a), by among other things, failing to list the name and address of the legal entity that is the employer.

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

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

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

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

⁷ See Lab. Code section 226.3 (establishing that the civil penalty is "per employee per violation").

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

Thus, EMPLOYER paid COMPLAINANT and all AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

EMPLOYER failed to timely pay COMPLAINANT and other AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation.

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁸

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

⁸ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

Among other things, under California law, when 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 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. *See* applicable IWC Wage Order, section 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See* Cal. Lab. Code section 2804.

Based on information and belief, COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto COMPLAINANT and other AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to use of COMPLAINANT's mobile phone and data usage and uniforms/work clothing.

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, costs associated with the maintenance/purchase of uniforms/work clothing.

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

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

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

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

Based on further information and belief, as a condition of obtaining employment, EMPLOYER required AGGRIEVED EMPLOYEES to disclose criminal convictions/other criminal history on their employment applications in violation of the California Fair Employment and Housing Act and required AGGRIEVED EMPLOYEES to sign off on these illegal background checks, in violation of Labor Code section 432.5.

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

Furthermore, based on information and belief, EMPLOYER asked about arrests not resulting in convictions on its employment application, in violation of California law. See Labor Code section 432.7.

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

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

Conclusion

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.

CROSNER LEGAL, PC