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16
 17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 18 **COUNTY OF LOS ANGELES**

19 JANET DEOFERIO, on behalf of herself,
 20 the State of California, and others
 21 similarly aggrieved,

22 Plaintiff,

23 v.

24 METHODIST HOSPITAL OF
 25 SOUTHERN CALIFORNIA, a California
 26 corporation and DOES 1-100, inclusive,

27 Defendants.

CASE NO. **22STCV06224**

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

28 Plaintiff JANET DEOFERIO ("PLAINTIFF"), on behalf of PLAINTIFF, the State of
 California, and all others similarly aggrieved, hereby files this Complaint against Defendant
 METHODIST HOSPITAL OF SOUTHERN CALIFORNIA ("METHODIST HOSPITAL" or

1 “DEFENDANT”) and DOES 1-100, inclusive. PLAINTIFF is informed and believes and thereon
2 alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This court possesses original subject matter jurisdiction over this matter. Venue is
5 proper in Los Angeles County, California, because DEFENDANT maintains its principal place
6 of business in Los Angeles County. Moreover, DEFENDANT conducts business within this
7 judicial district and some of the complained of conduct occurred in this judicial district. *See also*
8 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
9 PAGA action is proper in any county where the defendants committed Labor Code violations
10 against some of its employees).

11 **THE PARTIES**

12 2. PLAINTIFF is, and at all relevant times, was, an individual domiciled in the State of
13 California and a citizen of the State of California who worked as a full-time, non-exempt
14 employee for DEFENDANT in the State of California.

15 3. Defendant METHODIST HOSPITAL OF SOUTHERN CALIFORNIA is a California
16 corporation that, at all relevant times, was authorized to do business within the State of California
17 and is doing business in the State of California. DEFENDANT and its managing agents own,
18 operate, or otherwise manage a large full-service hospital located in Arcadia, California.

19 4. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
20 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant
21 by said fictitious names. Each of the Defendants designated herein as a DOE is legally
22 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend
23 this Complaint to reflect the true names and capacities of the Doe Defendants when such
24 identities become known.

25 5. PLAINTIFF is informed and believes that, at all relevant times, each Defendant was the
26 principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder,
27 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
28 some or all of the other DEFENDANTS, and was engaged with some or all of the other

1 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
2 other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged in
3 this complaint. PLAINTIFF is further informed and believes and thereon alleges that each
4 Defendant acted pursuant to and within the scope of the relationships alleged above, and that at
5 all relevant times, each Defendant knew or should have known about, authorized, ratified,
6 adopted, approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

7 **FACTUAL AND LEGAL ALLEGATIONS**

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

13 7. PLAINTIFF was employed by DEFENDANT, as a Registered Nurse (“RN”), from in or
14 about October 2019 until her date of termination, on or about April 2, 2021.

15 8. PLAINTIFF was typically scheduled to work at least eight (8) hours per day, five (5)
16 days per week. PLAINTIFF was paid on an hourly basis, but only for time counted by
17 DEFENDANT as hours worked. At all relevant times, PLAINTIFF was employed as an hourly-
18 paid, non-exempt employee.

19 9. PLAINTIFF was not paid for all hours worked because of DEFENDANT’s automatic
20 deduction policy and practice for meal periods described in further detail below. Additionally,
21 DEFENDANT implemented a time-rounding system that, as applied, systemically deprived
22 PLAINTIFF of compensable time because the time-rounding system implemented by
23 DEFENDANT understated actual compensable work time. DEFENDANT adjusted
24 PLAINTIFF’s time entries and or instructed PLAINTIFF to record only the scheduled beginning
25 and end times of PLAINTIFF’s shifts rather than the actual times PLAINTIFF began and stopped
26 working, resulting in PLAINTIFF consistently performing off-the-clock work. Based on
27 information and belief, DEFENDANT rounded PLAINTIFF’s time entries to the nearest quarter
28 hour, which more often than not, resulted in understating actual time worked and thus the

1 underpayment of wages owed to PLAINTIFF. This regular performance of off-the-clock work
2 resulted in DEFENDANT underpaying both minimum and overtime wages owed to
3 PLAINTIFF.

4 10. DEFENDANT further violated California's overtime wage laws by failing to
5 incorporate all non-discretionary compensation, including but not limited to, shift differential
6 and/or non-discretionary bonus compensation, into the regular pay rate used to calculate the
7 overtime rate of pay. Failing to include all non-discretionary compensation in the regular pay
8 rate resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of
9 overtime wages owed to PLAINTIFF.

10 11. PLAINTIFF was not always able to take timely, off duty, thirty-minute, uninterrupted
11 meal periods as PLAINTIFF would at times be forced to take late meal periods and or work
12 through part or all of her meal periods due to the nature and constraints of PLAINTIFF's job
13 duties, lack of relief nurses available and or pressure from supervisors to remain on duty/work
14 through meal periods when emergency situations arose/a patient required immediate attending
15 to. DEFENDANT instructed PLAINTIFF to clock out thirty minutes for these missed or
16 improper meal periods but to continue working. DEFENDANT implemented policies and
17 practices that failed to relieve PLAINTIFF of all duties and employer control during unpaid meal
18 breaks. DEFENDANT implemented a policy and practice of automatically deducting thirty
19 minutes per shift/requiring PLAINTIFF clock out thirty minutes per shift for these
20 missed/improper meal periods, despite having actual and/or constructive knowledge that
21 PLAINTIFF did not receive compliant meal periods.

22 12. Based on information and belief, DEFENDANT rounded the start and end times of
23 employee meal periods and start and end time of employee shifts resulting in PLAINTIFF not
24 being paid for all time worked. PLAINTIFF is further informed and believes and thereon alleges
25 that Defendant had actual or constructive knowledge that its time-rounding and auto-deduction
26 policies and practices resulted in the denial of lawful meal periods to PLAINTIFF and the
27 underpayment of wages owed PLAINTIFF, in violation of California's minimum and overtime
28 wage and meal period laws. DEFENDANT never paid PLAINTIFF an additional hour of wages

1 at her regular rate of pay for each workday a proper meal period was not provided. Based on
2 information and belief, DEFENDANT had a uniform policy and practice of failing to pay meal
3 period premiums at all or failing to pay proper meal period premiums for failure to incorporate
4 all non-discretionary compensation, including but not limited to, shift differential pay and/or
5 multiple regular rates of pay and/or non-discretionary bonus pay into the regular pay rate used to
6 calculate the owed meal period premium.

7 13. PLAINTIFF consistently did not receive compliant, timely, ten-minute paid rest
8 periods every four (4) hours worked or major fraction thereof. DEFENDANT did not properly
9 authorize and provide PLAINTIFF with appropriate rest periods at a rate of every four (4) hours
10 worked or major fraction thereof. PLAINTIFF was not adequately informed, authorized,
11 instructed about, nor permitted an opportunity to take proper rest breaks per California law. Per
12 DEFENDANT's unlawful rest period policy and practice, DEFENDANT instructed PLAINTIFF
13 take a single thirty-minute rest period per shift, immediately after clocking in for the beginning
14 of her shift each workday. Moreover, the single rest period would be interrupted, cut short and
15 or on duty due to the nature and constraints of PLAINTIFF's job duties and or commentary from
16 supervisors pressuring PLAINTIFF to take non-compliant rest breaks. DEFENDANT
17 implemented policies and practices that failed to relieve PLAINTIFF of all duties and employer
18 control during rest periods. Based on information and belief, DEFENDANT required
19 PLAINTIFF to remain on the worksite premises and tethered to her immediate work area during
20 any rest periods, such that she remained under employer control during any purported rest
21 periods, in violation of California rest period law. DEFENDANT had no compliant policy in
22 practice nor did DEFENDANT provide any instruction as to the proper timing and taking of off-
23 duty rest periods. PLAINTIFF was never paid a rest period premium for any missed/improper
24 rest period.

25 14. DEFENDANT failed to provide PLAINTIFF with accurate wage statements
26 that complied with Labor Code section 226. Wage statements provided by DEFENDANT do not
27 accurately reflect, *inter-alia*, the total hours worked for the pay period. Wage statements provided
28 by DEFENDANT fail to indicate the "total hours worked" by PLAINTIFF by virtue of

1 DEFENDANT's automatic deduction for on-duty/shortened/interrupted/missed meal periods,
2 time-rounding practices, and/or payment according to scheduled hours instead of actual hours
3 worked as described herein. As a result, the wage statements provided to PLAINTIFF were not
4 accurate and do not include all of the statutorily required information, such as, but not limited to,
5 the total hours worked. Accordingly, DEFENDANT violated Labor Code section 226.

6 15. Based on information and belief, DEFENDANT had a uniform policy and practice of
7 failing to reimburse its employees for all expenses DEFENDANT required they incur as a direct
8 consequence of the performance of their job duties. Based on information and belief,
9 PLAINTIFF was improperly required to pay for business expenses that are supposed to be the
10 responsibility of the employer, including but not limited to, cell phone/data plan charges and or
11 costs associated with having to purchase or maintain work uniforms/work clothing. Based on
12 information and belief, PLAINTIFF was required to use her personal cellphone/mobile
13 communication device to communicate and/or conduct work-related activities, such as but not
14 limited to, to receive text messages and/or calls from DEFENDANT regarding, e.g., scheduling,
15 but did not receive any reimbursement from DEFENDANT for these business-related expenses
16 she was required to incur as a direct consequence of the discharge of her job duties.
17 DEFENDANT's failure to provide PLAINTIFF with full reimbursement for all reasonable
18 expenses associated with carrying out her duties required PLAINTIFF to subsidize and/or carry
19 the burden of business expenses in violation of Labor Code section 2802.

20 16. Based on information and belief, upon separation of employment, PLAINTIFF's final
21 paycheck was not timely provided, and PLAINTIFF's final paycheck, once provided, did not
22 include all wages owed as it was devoid of, including but not limited to, all earned and unpaid
23 minimum wages, overtime wages, vacation pay and all accrued paid time off.

24 17. Based on information and belief, DEFENDANT required PLAINTIFF to submit to
25 an unlawful criminal and/or financial background check as a condition of obtaining and/or
26 holding employment in violation of Labor Code sections 1024.5 and/or 432.7. Based on further
27 information and belief, DEFENDANT also required PLAINTIFF to agree in writing to unlawful
28 background checks not in conformity with the requirements of Investigative Consumer Reporting

1 Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and the Fair Credit Reporting Act,
2 15 U.S.C. sections 1681, et seq. ("FCRA"), in violation of Labor Code section 432.5. Based on
3 information and belief, DEFENDANT asked about arrests not resulting in convictions on its
4 employment application, in violation of Labor Code section 432.7, and or otherwise unlawfully
5 asked about criminal convictions/unlawfully required the disclosure of criminal convictions prior
6 to extending a conditional offer of employment and required PLAINTIFF to agree in writing to
7 the unlawful disclosures, in violation of Labor Code section 432.5.

8 18. PLAINTIFF is informed and believes and allege thereon that DEFENDANT engaged
9 in these same herein described unlawful practices with regard to all of the Aggrieved Employees
10 (defined below), and that DEFENDANT applied these same herein described unlawful practices
11 to all of its employees that it applied to PLAINTIFF.

12 **PAGA**

13 19. PLAINTIFF brings this complaint under the Private Attorneys General Act of 2004,
14 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action for violations of the
15 Labor Code as to all similarly aggrieved individuals employed by DEFENDANT in the State of
16 California as a non-exempt employee. This action is brought solely pursuant to PAGA and seeks
17 no relief beyond that available under PAGA.

18 20. Under Labor Code section 2699.3, the LWDA must give written notice by certified
19 mail to the parties that it intends to investigate the alleged violations within 65 days of the date
20 of PLAINTIFF's written notice. PLAINTIFF has complied with the administrative exhaustion
21 procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. PLAINTIFF
22 gave timely written notice by certified mail to DEFENDANT of the violation of various
23 provisions of the California Labor Code as alleged in this complaint and filed notice of the
24 violations online with the Labor and Workforce Development Agency ("LWDA"). On October
25 7, 2021, PLAINTIFF filed PLAINTIFF's notice with the LWDA ("PAGA Notice") and sent
26 DEFENDANT the PAGA Notice via certified mail. The LWDA assigned PLAINTIFF the
27 following case number: LWDA-CM-847667-21. Attached hereto as **Exhibit 1** is a true and
28 correct copy of PLAINTIFF's PAGA Notice.

1 21. The LWDA did not provide notice of its intention to investigate PLAINTIFF's claims
2 on behalf of the State of California and the Aggrieved Employees after expiration of the 65-day
3 waiting time period, or at any time. To the extent any of the alleged violations were curable,
4 DEFENDANT failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF has
5 exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,
6 PLAINTIFF's right to file the instant lawsuit has duly accrued

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

16 23. PLAINTIFF is an "aggrieved employee" as that term is defined under the Labor Code
17 section 2699(c), as PLAINTIFF was employed by DEFENDANT during the applicable statutory
18 limitations period and suffered one or more of the Labor Code violations set forth herein.
19 Accordingly, PLAINTIFF seeks to recover on behalf of herself, the State of California, and all
20 Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorneys' fees
21 and costs.

22 24. PLAINTIFF has standing to bring a PAGA action on behalf of the defined
23 Aggrieved Employees, as she was employed by DEFENDANT and affected by one or more
24 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
25 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
26 committed by the employer – regardless of whether PLAINTIFF experienced all violations
27 personally. *Id.* at 760-761.

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1 per workday and must be paid double the regular hourly rate of pay for each hour worked beyond
2 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the
3 seventh consecutive day of work in a work week, unless they are exempt.

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

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

24 34. DEFENDANT further violated California's overtime wage laws by failing to
25 incorporate all non-discretionary compensation, including but not limited to, shift differential
26 pay and or multiple regular pay rates and or non-discretionary bonus compensation, into the
27 regular pay rate used to calculate the overtime rate of pay. Failing to include non-discretionary
28 compensation in the regular pay rate resulted in a miscalculation of the overtime wage rate,

1 resulting in the underpayment of overtime wages owed to Aggrieved Employees.

2 **35. Meal Breaks.** Under Labor Code sections 226.7, 512, and the applicable IWC Wage
3 Orders, DEFENDANT was required to provide PLAINTIFF and the Aggrieved Employees with
4 one thirty (30) minute meal break free from all duties for all shifts greater than five (5) but less
5 than ten (10) hours in length, and a second thirty (30) minute meal break free from all duties for
6 all shifts of ten (10) hours or more. The first meal period must be provided before the end of the
7 fifth hour of work and the second meal period before the end of the tenth hour of work. Employers
8 covered by the Wage Orders have an obligation to both (a) relieve their employees for at least
9 one meal period for shifts over five hours, and (b) to record having done so. If the employer fails
10 to properly record a compliant meal period, it is presumed no meal period was provided.
11 PLAINTIFF and the Aggrieved Employees were not provided timely, off-duty, uninterrupted
12 thirty-minute meal periods.

13 **36.** PLAINTIFF and other Aggrieved Employees consistently worked shifts of five and a
14 half hours or more. PLAINTIFF would not receive a single legally compliant thirty (30) minute
15 first meal break. Aggrieved Employees who worked shifts longer than ten hours would not
16 receive a legally compliant second meal break before the end of the tenth hour of work.
17 PLAINTIFF and similarly Aggrieved Employees were consistently unable to take timely, off
18 duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods,
19 interrupted meal periods, and/or work through part or all their meal periods due to the nature and
20 constraints of their job duties and or commentary from supervisors pressuring them to take non-
21 compliant breaks or skip breaks completely. DEFENDANT implemented a policy and practice
22 of automatically deducting at least thirty minutes per shift for these missed/improper meal
23 periods, despite having actual and/or constructive knowledge that PLAINTIFF and other
24 Aggrieved Employees did not receive compliant meal periods. DEFENDANT further
25 implemented policies and practices that failed to relieve PLAINTIFF and other Aggrieved
26 Employees of all duties and DEFENDANTS' control during unpaid meal breaks. Based on
27 further information and belief, DEFENDANT illegally rounded the start and end times of
28 employee meal periods resulting in PLAINTIFF and other Aggrieved Employees not being paid

1 for all time worked as well as late or shortened meal periods. See *Donohue v. AMN Services,*
2 *LLC*, (2021) 11 Cal.5th 58. Based on information and belief, DEFENDANT did not have a
3 written meal break policy, nor did DEFENDANT have any sort of compliant policy in practice.
4 Liability for the aggrieved employees can be established by evidence that an employer adopted
5 a uniform corporate break policy that failed to give full effect to California law and the applicable
6 Wage Order requirements. The fact that employees may legally waive meal breaks does not
7 affect this result. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
8 PLAINTIFF is further informed and believes and thereon alleges that DEFENDANT had actual
9 or constructive knowledge that its time-rounding and auto-deduction policies and practices
10 resulted in the denial of meal periods owed PLAINTIFF and other Aggrieved Employees, in
11 violation of California's meal period laws. DEFENDANT never paid PLAINTIFF and other
12 Aggrieved Employees an additional hour of wages at their respective regular rates of pay for
13 each workday a proper meal period was not provided.

14 **37. Rest Breaks.** PLAINTIFF and other Aggrieved Employees did not receive compliant
15 net ten (10)-minute rest periods for every four (4) hours worked (or major fraction thereof), as
16 required by Labor Code 226.7 and the applicable IWC Wage Orders. PLAINTIFF and other
17 Aggrieved Employees regularly worked more than three-and-one-half (3½) hours without being
18 authorized or permitted to take a paid net ten (10) minute rest period. DEFENDANT required
19 PLAINTIFF and other Aggrieved Employees to continuously work without authorizing or
20 providing paid rest periods. Any purported rest periods would be interrupted, cut short, on duty,
21 and or late due to the nature and constraints of the Aggrieved Employees' job duties and or
22 commentary from DEFENDANT pressuring the Aggrieved Employees to skip rest breaks
23 completely/take non-compliant rest breaks. PLAINTIFF and other Aggrieved Employees were
24 unable to avail themselves of their rest breaks for various reasons, including but not limited to,
25 pressure to attend to patients' needs whenever they arose and or complete their work duties
26 according to a designated schedule such that rest breaks were only taken once jobs were
27 completed/as time permitted. DEFENDANT implemented policies and practices that failed to
28 relieve Aggrieved Employees of all duties and employer control during rest periods. Per

1 DEFENDANT's policy, DEFENDANT required Aggrieved Employees to remain tethered to
2 their worksites and/or work communication devices during any rest periods, rendering any
3 purported rest periods on duty or otherwise noncompliant with California law. See *Augustus v.*
4 *ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. DEFENDANT did not have a compliant rest
5 period policy in place regarding the taking, proper timing, or duty-free nature of rest periods.
6 PLAINTIFF and other Aggrieved Employees were never paid a rest period premium for any
7 missed/improper rest period.

8 **38. Unpaid Sick Leave Wages.** DEFENDANT failed to provide PLAINTIFF and the
9 Aggrieved Employees paid sick days in accordance with Labor Code sections 245 through 248.5,
10 further failing to put them on notice of their paid sick leave rights—or thereby putting their
11 entitlement to sick leave in a Labor Code section 2810.5 notice. DEFENDANT failed to maintain
12 accurate records documenting the hours worked and paid sick days accrued and used by
13 employees in violation of Labor Code section 247.5, permitting the presumption that Aggrieved
14 Employees were entitled to the maximum number of hours accruable at the time of their
15 respective separations of employment. By failing to correctly account for the true hours worked
16 by Aggrieved Employees (by virtue of the auto-deduction and time rounding policies, and failure
17 to account and pay for all hours worked, as described herein) and or failing to provide paid sick
18 leave at all, DEFENDANT unlawfully retained and continue to retain paid sick leave that should
19 have been paid and was not. Accordingly, DEFENDANT has violated Labor Code sections 233
20 and 234 as to the Aggrieved Employees. DEFENDANT either failed to pay sick leave at all or
21 improperly calculated the sick leave accrual and the rate of sick leave pay owed to PLAINTIFF
22 and the Aggrieved Employees by failing to base the accrued sick leave hours on the correct
23 number of hours worked due to the auto-deduction and time rounding policies, and failure to pay
24 for all hours worked, as described herein. DEFENDANT further failed to comply with Labor
25 Code section 246 by failing to provide PLAINTIFF and the Aggrieved Employees with wage
26 statements or separate documents showing the amount of paid sick leave available, or paid time
27 off leave in lieu of sick leave. DEFENDANT violated and continues to violate Labor Code
28 section 246 by failing to provide Aggrieved Employees with a Labor Code 226 wage statement

1 or separate writing containing amount of paid sick leave available, or paid time off leave an
2 employer provides in lieu of sick leave, at the time it pays wages.

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

10 40. DEFENDANT knew or had reason to know PLAINTIFF and the Aggrieved Employees
11 were working during their meal breaks and otherwise working off-the-clock and not being paid
12 for all hours worked. DEFENDANT knowingly and intentionally failed to provide PLAINTIFF
13 and the Aggrieved Employees with accurate, itemized wage statements as the wage statements
14 provided by DEFENDANT do not accurately reflect, *inter alia*, the correct total hours worked.
15 Due to, including but not limited to, DEFENDANT's time-rounding policies and practices and
16 unlawful practice for shortened/on-duty meal periods, DEFENDANT's wage statements fail to
17 reflect the true total hours worked by PLAINTIFF and the Aggrieved Employees worked, as
18 required under Labor Code section 226. As a result of DEFENDANT's failure, PLAINTIFF and
19 the Aggrieved Employees suffered injury. Accordingly, DEFENDANT has violated Labor Code
20 section 226.

21 **41. Record Keeping.** California Labor Code sections 226 and 1174 require employers to
22 keep "accurate and complete" payroll records showing, among other things, the hours worked
23 daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly
24 requires employers to keep time records showing, *inter alia*, when the employees begin and end
25 each work period and reflecting the true start and end times during which all owed meal periods
26 are provided each day. At all relevant times, DEFENDANT has failed, and continue to fail, to
27 keep the required time records, as DEFENDANT has failed to record the true start and end times
28 of PLAINTIFF's and the Aggrieved Employees' workdays and failed to record employee meal

1 periods as time worked. DEFENDANT's failure to keep "accurate and complete" payroll records
2 for PLAINTIFF and the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and
3 Section 7 of all applicable IWC Wage Orders. These violations subject DEFENDANT to civil
4 penalties under the Labor Code, including without limitation sections 1174.5 and 2699. Each
5 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
6 results in a separate civil penalty.

7 **42. Untimely Wages at Termination.** Labor Code section 201 requires employers to pay
8 all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
9 Code section 202 extends those provisions to employees who resign. For all Aggrieved
10 Employees no longer employed by DEFENDANT, DEFENDANT has an ongoing failure to pay
11 such aggrieved employees all wages earned and unpaid at the time of discharge or resignation,
12 due to DEFENDANT's failure to pay, *inter alia*, all owed minimum wages, overtime wages,
13 vacation pay and all paid time off at the properly accrued rates. These violations subject
14 DEFENDANT to civil penalties under the Labor Code, including without limitation Labor Code
15 sections 203, 256 and 2699. Each violation results in a separate civil penalty, for each Aggrieved
16 Employee for each pay period during which the statutory provisions were violated.

17 **43. Refusal to Pay Wages Due.** Labor Code section 216 declares unlawful an employer's
18 refusal to pay wages due and payable and/or an employer's denial of the validity of any claim to
19 wages due. DEFENDANT has violated this section by, *inter-alia*, failing to pay PLAINTIFF and
20 the Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay
21 PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for each meal
22 or rest period not provided/that was invalid. These violations subject DEFENDANT to civil
23 penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
24 each aggrieved employee, for each pay period during which the statute provisions were violated.

25 **44. Statutory Wages.** California Labor Code section 223 makes it unlawful for an
26 employer to secretly pay wages lower than required by statute while purporting to pay legal
27 wages. As described above, DEFENDANT willfully and systematically denied the Aggrieved
28 Employees minimum and overtime wage compensation for all hours worked which resulted in

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

4 **45. Unreimbursed Business Expenses.** Based on information and belief, DEFENDANT
5 regularly failed to reimburse and indemnify Aggrieved Employees for business expenses,
6 including but not limited to, costs associated with being required to use their cell phones/other
7 mobile devices for work, costs associated with the use of their personal computer when working
8 from home and or costs associated with the purchase and or maintenance of
9 uniforms/clothing/safety equipment for work. Pursuant to Labor Code section 2802, Aggrieved
10 Employees were entitled to be reimbursed for all reasonable expenses associated with carrying
11 out their job duties. Aggrieved Employees were improperly required to pay for business expenses
12 that are supposed to be the responsibility of the employer, including but not limited to, costs
13 associated with the use of their personal computers/other expenses incurred when working from
14 home and or costs associated with the purchase and or maintenance of uniforms/clothing/safety
15 equipment for work and or cell phone/data plan charges. Among other things, under California
16 law, when employees must use their personal cellphones for work-related purposes, the employer
17 must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v.*
18 *Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an
19 employee will only need to show that he or she was required to use their personal cellphone for
20 work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Aggrieved Employees
21 were improperly required to use their personal cellphones to communicate and conduct work-
22 related activities, such as but not limited to, to receive text messages and or calls from
23 DEFENDANT regarding, e.g., scheduling. As a pattern and practice, DEFENDANT regularly
24 failed to reimburse and indemnify Aggrieved Employees for business expenses. Pursuant to
25 California Labor Code section 2802, Aggrieved Employees were entitled to be reimbursed for
26 all reasonable expenses associated with carrying out orders by their employer and/or carrying
27 out the duties assigned by their employer. DEFENDANT's failure to provide Aggrieved
28 Employees with full reimbursement for all reasonable expenses associated with carrying out their

1 duties required that Aggrieved Employees subsidize and/or carry the burden of business expenses
2 in violation of Labor Code section 2802.

3 **46. Standard Conditions of Labor.** DEFENDANT also violated Labor Code Section
4 1198 and 1199, which together, make it unlawful to employ individuals under conditions or labor
5 that are prohibited by the Wage Orders or any provision within Part 4, Chapter 1 of the Labor
6 Code, or order or ruling of the commission. DEFENDANT's violations with respect to, including
7 but not limited to, meal periods, rest periods, recordkeeping provisions, minimum wages and
8 overtime wages, and failure to reimburse business expenses, result in separate violations of
9 sections 1198 and 1199, which subject DEFENDANT to civil penalties under Labor Code
10 section 2699.1

11 **47. Background Check Violations and Impermissible Criminal History Questions.** In
12 addition to the above requirements, the California Labor Code places certain procedural and
13 substantive limits on employers' ability to conduct employee background checks and on how
14 employers can use the information they obtain through these background checks. Upon
15 information and belief, DEFENDANT required PLAINTIFF and the Aggrieved Employees to
16 submit or agree to submit to unlawful criminal and/or financial background checks as a condition
17 of obtaining and/or holding employment in violation of Labor Code sections 1024.5, 432.7,
18 and/or 432.5. DEFENDANT also required PLAINTIFF and the Aggrieved Employees to agree
19 in writing to unlawful background checks not in conformance with the requirements of the
20 Investigative Consumer Reporting Agencies Act, Civil Code §§ 1786, et seq. ("ICRAA"), and
21 the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq. ("FCRA"), and thus required Aggrieved
22 Employees to agree (in writing) to an unlawful background check as a condition of employment,
23 in violation of Labor Code section 432.5. Upon information and belief, DEFNDANT, in
24 violation of California law, including but not limited to Labor Code section 432.7 and the Fair
25 Chance Act, asked about arrests not resulting in convictions on its employment application, asked
26 about convictions prior to extending an offer of employment to Aggrieved Employees and/or
27 otherwise impermissibly inquired into criminal history on its employment application in
28 violation of California law. By asking about arrests not resulting in convictions, DEFENDANT

1 violated Labor Code 432.7. By asking about convictions at the application phase or prior to
2 extending an employment offer, DEFENDANT violated California's Fair Chance Act, and
3 thereby violated Labor Code 432.5 by unlawfully requiring the Aggrieved Employees to agree
4 in writing to disclose arrests or convictions as a condition of employment. These violations
5 subject DEFENDANT to civil penalties under the Labor Code, including without limitation
6 Labor Code sections 432.5, 432.7 and 2699. Each violation of each Labor Code section and Wage
7 Order provision, for each aggrieved employee, results in a separate civil penalty.

8 48. Under the provisions of PAGA and Labor Code sections 201-203, 210, 221-223, 226,
9 226.7, 233-234, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197,
10 1197.1, 1198, 1199, 2802, 2810.5 and all relevant sections of the applicable Wage Orders, as
11 well as all interpretations of these laws by California Courts and administrative bodies, as well
12 as any other law that is enforceable through PAGA, DEFENDANT is liable for all statutorily-
13 specified penalties recoverable under PAGA as enumerated in the relevant California Labor
14 Code provisions listed herein, or for default PAGA penalties under Labor Code section 2699(f)
15 for any violation of a Labor Code section without a specified civil penalty.

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

19 **PRAYER**

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

- 22 1. For civil penalties according to proof;
23 2. For reasonable attorney's fees and costs of suit; and
24 3. For such other and further relief as the Court deems just and proper.
25

26 Dated: February 18, 2022

CROSNER LEGAL, P.C.

27 
28 _____

Michael R. Crosner
Zachary M. Crosner
Blake R. Jones
Jonathan Stilz
Attorneys for PLAINTIFF

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EXHIBIT

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office: (310) 496-5818
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October 7, 2021

VIA ELECTRONIC 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 (RETURN
RECEIPT REQUESTED):**

William Grigg,
Agent for Service of Process for:
**Methodist Hospital of Southern
California**
300 West Huntington Drive
Arcadia, CA 91007

**Methodist Hospital of Southern
California**

Attn: Legal Dept.
300 West Huntington Drive
Arcadia, CA 91007

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency, Methodist
Hospital of Southern California
Date: October 7, 2021
Subject: *Janet Deoferio v. Methodist Hospital of Southern
California*

Introduction

This office represents COMPLAINANT, Janet Deoferio (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 entity and individual managing agents of said entity: Methodist Hospital of Southern California (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 electronic filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent 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, 216, 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.

Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

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

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities, such as, but not limited to, any staffing agency that supplied workers to the named entity, must be classified as joint employers of COMPLAINANT and other AGGRIEVED EMPLOYEES for purposes of liability for civil penalties under PAGA, on the grounds that they engaged, suffered and permitted COMPLAINANT and other AGGRIEVED EMPLOYEES 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 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

Methodist Hospital of Southern California and its managing agents own, operate, or otherwise manage a hospital located in Arcadia, California. While EMPLOYER may operate a successful company/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER, as a Registered Nurse (“RN”), from in or about October 2019 until COMPLAINANT went out on medical leave and was then terminated, on or about April 2, 2021. COMPLAINANT and similarly AGGRIEVED EMPLOYEES typically worked approximately eight (8) hours per day, five (5) days per week. COMPLAINANT and similarly AGGRIEVED EMPLOYEES worked as RNs. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were paid on an hourly basis. 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 (and all applicable IWC Wage Orders), section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

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

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

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

Based on information and belief, 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 (and all applicable IWC Wage Orders), section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. 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.*

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

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 (and all applicable IWC Wage Orders), 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 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, as they would at times be forced to take late meal periods and/or work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors pressuring them to take non-compliant breaks. Based on information and belief, COMPLAINANT and other AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out each shift for a thirty-minute meal period but would be required to continue working or otherwise remain on duty due to patient emergencies that arose and or lack of coverage/lack of relief nurses available.

Based on information and belief, EMPLOYER implemented a policy and practice of automatically deducting/requiring COMPLAINANT and other AGGRIEVED EMPLOYEES to clock out 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.

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

Based on information and belief, EMPLOYER did not have a compliant 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 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 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 at times 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, such as, but not limited to, non-discretionary bonus 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, and all applicable IWC Wage Orders, 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, 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; applicable IWC Wage Order, 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 work day that the rest period is not provided").

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

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

Per EMPLOYER's unlawful rest period policy and practice, EMPLOYER instructed COMPLAINANT and other AGGRIEVED EMPLOYEES to take a single thirty-minute rest period, immediately after clocking in for the beginning of their shifts.

Moreover, rest periods would be interrupted, cut short and or on duty due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties and or commentary from supervisors pressuring them to take non-compliant rest breaks. AGGRIEVED EMPLOYEES were at times instructed by their supervisors to work through their rest periods due to lack of coverage/lack of relief nurses available and or having to attend to a patient emergency.

Based on information and belief, EMPLOYER required COMPLAINANT and other AGGRIEVED EMPLOYEES to remain on the worksite premises during any rest periods, rendering any purported rest periods on duty and therefore not compliant with California law.

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

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 (and all applicable IWC Wage Orders), 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: 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.

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 practices 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 alleges on information and belief that EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and or forty hours in a week.

COMPLAINANT and similarly AGGRIEVED EMPLOYEES were unable to take timely, off duty, thirty-minute, uninterrupted meal periods, as they would at times be 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 them to take non-compliant breaks. Based on information and belief,

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out each shift for a thirty-minute meal period but would be required to continue working or otherwise remain on duty due to patient emergencies that arose and or lack of coverage/lack of relief nurses available.

Based on information and belief, EMPLOYER implemented a policy and practice of automatically deducting thirty minutes per shift for meal periods/requiring COMPLAINANT and other AGGRIEVED EMPLOYEES to clock out for 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.

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

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 5-2001 (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.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 (and all applicable IWC Wage Orders), 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.

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

Namely, EMPLOYER's automatic deduction and time rounding policies and practices described herein 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 COMPLAINANT and other 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 (and all applicable IWC Wage Orders), 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 (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.⁵

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, EMPLOYER failed to properly accrue and pay all owed sick leave, due to, including but not limited to, EMPLOYER's failure to account for true actual hours worked (by virtue of EMPLOYER's meal period auto-deduction and time rounding practices, as described herein) and or failure to incorporate all forms of non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift pay differential pay, into the sick pay calculation.

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.

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

But for this failure, COMPLAINANT and other 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 as a result of its failure to properly institute a paid sick leave program.

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

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

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

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, all described in greater detail *supra*).

Based on information and belief, EMPLOYER's wage statements that it provided to COMPLAINANT and other AGGRIEVED EMPLOYEES fail to display all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee due to the time rounding and auto-deduction practices described herein as well as EMPLOYER's failure to incorporate all non-discretionary compensation into the overtime rate.

In addition, because of the violations detailed above, including not paying regular, sick, 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.

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

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 and sick leave wages 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, based on information and belief, AGGRIEVED EMPLOYEES' final paychecks were not timely provided, and COMPLAINANT and other AGGRIEVED

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

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, all owed vacation pay, 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 personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. 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, such as, but not limited to, mobile phone and data usage, computer usage, and or uniforms/work clothing.

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").

Based on information and belief, 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.

Based on information and belief, 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, cell phone/data plan charges and or costs associated with use of their personal computer when working from home and or 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:

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Thank you for your attention to this matter.

Best Regards,

Zachary M. Crosner

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