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9 Attorneys for Plaintiff RHINA VILLEDA

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

12
13 RHINA VILLEDA, on behalf of herself,
14 the State of California, and others similarly
situated and aggrieved,

15 Plaintiff,

16
17 v.

18 SOLHEIM LUTHERAN HOME, a
19 California corporation; and DOES 1-100,
20 inclusive,

21 Defendants.
22

Case No.: 22STCV09841

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

23 Plaintiff RHINA VILLEDA ("PLAINTIFF" or "PLAINTIFF VILLEDA"), an individual on
24 behalf of herself, the State of California, and all other Aggrieved Employees (as defined below),
25 hereby files this Complaint against Defendants SOLHEIM LUTHERAN HOME, a California
26 corporation; and DOES 1 to 100, inclusive, (collectively referred to herein as "DEFENDANTS").
27 PLAINTIFF is informed and believes, and on the basis of that information and belief, alleges as
28 follows:

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INTRODUCTION

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

JURISDICTION AND VENUE

2. This Court has jurisdiction over PLAINTIFF's claims for penalties pursuant to California statutes, including but not limited to the PAGA, and decisional law and regulations.

3. Venue is proper in this judicial district and the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5 because DEFENDANTS employed PLAINTIFF at one of their facilities located in the County of Los Angeles, and some of the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this county. *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants committed Labor Code violations against some of its employees).

THE PARTIES

4. Defendant SOLHEIM LUTHERAN HOME is a California corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

5. DEFENDANTS and their managing agents own, operate, or otherwise manage a senior living/retirement community in Los Angeles, California, that provides residential living, assisted living, skilled nursing, rehabilitation, and memory care services to seniors.

6. PLAINTIFF VILLEDA is, and at all relevant times, was an individual domiciled in the State of California and a citizen of the State of California who worked as a full-time non-exempt employee for DEFENDANTS in the State of California.

7. PLAINTIFF VILLEDA was employed by DEFENDANTS as a full-time non-exempt employee during the relevant time period, until the separation of her employment in January 2021.

8. The true names and capacities of the DOE DEFENDANTS sued herein as DOES 1

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

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

16 10. At all relevant times, DEFENDANTS were and are legally responsible for all unlawful
17 conduct, policies, practices, acts and omissions complained of herein. Further, DEFENDANTS are
18 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
19 respondent superior. The conduct of DEFENDANTS' managers and supervisors was at all relevant
20 times undertaken as employees of DEFENDANTS, acting within the scope of their employment or
21 authority in all of the unlawful activities described herein.

22 **JOINT LIABILITY**

23 11. Under California law, the definition of the term "to employ" is broadly construed under
24 the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise
25 control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage,
26 thereby creating a common law employment relationship. See *Martinez v. Combs*, 49 Cal.4th 35, 64
27 (2010). One reason that the IWC defined "employer" in terms of exercising control was to reach
28 situations in which multiple entities control different aspects of the employment relationship.

1 Supervision of the work, in the specific sense of exercising control over how services are properly
2 performed, is properly viewed as one of the "working conditions" mentioned in the wage order. *Id.*
3 at 76. A joint employer relationship exists when one entity hires and pays a worker, and the other
4 entity supervises the work. *Id.*

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

12 13. PLAINTIFF is informed and believes and thereon alleges that at all relevant times,
13 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
14 human resources.

15 14. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant to
16 this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
17 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
18 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
19 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
20 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
21 Employees. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
22 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
23 time-keeping practices, meal and rest periods, and other working conditions that were distributed
24 to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS
25 uniformly compensated and controlled the wages of PLAINTIFF and the Aggrieved Employees in
26 a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the Aggrieved
27 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
28 collectively retained the right to terminate PLAINTIFF and the Aggrieved Employees' employment

1 with or without cause. Upon information and belief, DEFENDANTS further collectively
2 represented to PLAINTIFF and the Aggrieved Employees in writing the details of their
3 compensation, and the manner in which they were to take meal and rest periods, the procedures
4 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
5 to PLAINTIFF and the Aggrieved Employees by which DEFENDANTS collectively would
6 evaluate the wage rates of PLAINTIFF and the Aggrieved Employees.

7 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours and
8 working conditions of PLAINTIFF and the Aggrieved Employees. As such, DEFENDANTS
9 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
10 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
11 PLAINTIFF seeks relief in this Complaint.

12 16. PLAINTIFF is informed and believes that DEFENDANTS exercised the same control
13 over, applied the same policies and practices, and engaged in the same acts and omissions with
14 regard to the other Aggrieved Employees.

15 17. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must
16 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
17 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform
18 services from which they benefited, and furthermore that the aforementioned entities had the right
19 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant
20 times herein, so as to be considered the joint employers of PLAINTIFF.

21 18. By reason of their status as joint employers of PLAINTIFF and Aggrieved Employees,
22 DEFENDANTS are each liable for civil penalties for violations of the California Labor Code and
23 applicable Wage Orders as to PLAINTIFF and other Aggrieved Employees.

24 **PAGA ALLEGATIONS**

25 19. PLAINTIFF brings this action under the PAGA, as a representative action on behalf of
26 herself, the State of California and Aggrieved Employees, regarding violations of the California
27 Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

28 All current and former non-exempt employees employed by DEFENDANTS

1 in California at any time from one year plus 65 days from filing of the initial
2 Complaint through the present ("PAGA Period").

3 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
4 section 2699(c), as she was employed by DEFENDANTS during the applicable statutory limitations
5 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
6 PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other Aggrieved
7 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
8 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
9 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
10 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
11 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
12 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

13 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

14 21. On November 29, 2021, PLAINTIFF VILLEDA, through her counsel, gave written
15 notice by online filing with the California Labor and Workforce Development Agency ("LWDA")
16 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
17 allegations alleged in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's
18 claims for violations of the California Labor Code and the applicable wage orders on behalf of
19 herself, the State of California and other Aggrieved Employees. The LWDA assigned PLAINTIFF
20 the following case number: LWDA-CM-854797-21. Attached hereto as **Exhibit 1** is a true and
21 correct copy of the PAGA Notice also sent to DEFENDANTS via certified mail.

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

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

3 **FACTUAL ALLEGATIONS**

4 24. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were employed
5 by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised control over
6 PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them to work.

7 25. PLAINTIFF was employed by DEFENDANTS as a non-exempt Certified Nursing
8 Assistant (“CNA”) and/or similar title during the PAGA Period and was subject to one or more of
9 the Labor Code violations alleged herein.

10 26. PLAINTIFF typically worked shifts of at least eight (8) hours per day, five (5) days
11 per week.

12 27. DEFENDANTS failed to compensate PLAINTIFF for all hours worked by virtue of its
13 time-rounding policies and practices and auto-deduction policy and practice for on-duty,
14 interrupted, shortened and/or missed meal periods, as described herein. DEFENDANTS required
15 PLAINTIFF to clock out for a thirty-minute meal period each shift even though PLAINTIFF did
16 not always receive uninterrupted, off-duty, thirty-minute meal periods due to a lack of relief nurses
17 available, understaffing, having to monitor a work communication device and/or respond to work
18 communications to attend to patients’ needs/situations at any given time. DEFENDANTS
19 implemented policies and/or practices that failed to relieve PLAINTIFF of all duties and employer
20 control during unpaid meal breaks. DEFENDANTS required PLAINTIFF to remain on the worksite
21 premises and/or monitor a work communication device for communications from management so
22 PLAINTIFF could attend to any patient/resident situations that arose during her shifts, including
23 during unpaid meal breaks. For example, PLAINTIFF’s meal breaks were often interrupted/cut short
24 due to calls from management on DEFENDANTS’ public address (“PA”) system instructing
25 PLAINTIFF to return to work immediately to attend to one of her patients. Nevertheless,
26 DEFENDANTS deducted thirty minutes per shift for these on-duty, interrupted, shortened and/or
27 missed meal periods, resulting in significant uncompensated work time and the underpayment of
28 minimum and overtime wages owed to PLAINTIFF.

1 28. Based on information and belief, DEFENDANTS illegally rounded the start and end
2 times of employee meal periods resulting in PLAINTIFF not being paid for all time worked as well
3 as late or shortened meal periods.

4 29. Further, based on information and belief, DEFENDANTS implemented a policy and/or
5 practice of time rounding shift start and end times that, as applied, systematically deprived
6 PLAINTIFF of compensable time because the time-rounding system, more often than not, if not
7 always, resulted in understating PLAINTIFF's actual compensable work time and thus the
8 underpayment of minimum and overtime wages owed to PLAINTIFF. DEFENDANTS also
9 mandated pre-shift and/or post shift off-the clock work. For example, DEFENDANTS required
10 PLAINTIFF to undergo Covid-related temperature checks prior to clocking in for the start of her
11 shift each workday. PLAINTIFF was required to stand in long employee lines for these pre-clock-
12 in temperature checks, often resulting in at least five minutes of off-the-clock work each workday
13 and the underpayment of minimum and overtime wages owed to PLAINTIFF. Throughout her
14 employment with DEFENDANTS, DEFENDANTS required PLAINTIFF to clock out for at least
15 thirty minutes per shift for purported meal periods even though PLAINTIFF was not relieved of all
16 duties or employer control during her meal breaks.

17 30. Based on information and belief, PLAINTIFF worked at least eight (8) hours per day
18 each day PLAINTIFF worked for DEFENDANTS. As described herein, PLAINTIFF was not
19 provided a thirty-minute, off-duty meal period before the end of the fifth hour of work each day she
20 worked for DEFENDANTS due to DEFENDANTS' policies and practices explained herein that
21 failed to relieve PLAINTIFF of all duties or employer control during meal periods as well as
22 pressure from management/her supervisors to take noncompliant meal periods or skip meal periods
23 completely. DEFENDANTS did not advise PLAINTIFF that meal periods should be free of all
24 duties and employer control.

25 31. Based on information and belief, DEFENDANTS rounded the start and end times of
26 employee meal periods and start and end time of employee shifts resulting in PLAINTIFF not being
27 paid for all time worked. PLAINTIFF is further informed and believes and thereon alleges that
28 DEFENDANTS had actual or constructive knowledge that its time-rounding and auto-deduction

1 policies and practices and policies and practices that failed to relieve PLAINTIFF of all duties or
2 employer control during unpaid meal periods resulted in the denial of lawful meal periods to
3 PLAINTIFF and the underpayment of wages owed PLAINTIFF, in violation of California's
4 minimum and overtime wage and meal period laws. DEFENDANTS never paid PLAINTIFF an
5 additional hour of wages at PLAINTIFF's regular rate of pay for each workday a proper meal period
6 was not provided.

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

11 33. PLAINTIFF's work schedule typically entitled her to two (2) rest periods per shift.
12 However, PLAINTIFF was consistently unable to take a net, ten-minute, off-duty rest period for
13 every four (4) hours worked or major fraction thereof. PLAINTIFF rarely, if ever, received a net,
14 ten-minute, uninterrupted, off-duty, rest periods due to a lack of relief nurses available,
15 understaffing, having to constantly monitor work communication devices and respond to work
16 communications and/or attend to patients' needs/situations that arose whenever they arose,
17 including during any rest periods. DEFENDANTS implemented policies and practices that failed to
18 relieve PLAINTIFF of all duties and employer control during any rest periods. For example, per
19 DEFENDANTS' policy, PLAINTIFF was prohibited from leaving the worksite premises during
20 any rest periods and required to monitor a work communication device during any rest periods and
21 thus remained under employer control during any rest periods, rendering said rest periods
22 noncompliant with California law. DEFENDANTS never paid PLAINTIFF any rest period
23 premium for any missed/non-compliant rest period.

24 34. DEFENDANTS failed to issue PLAINTIFF with accurate wage statements
25 that complied with Labor Code section 226. Wage statements provided by DEFENDANTS do not
26 accurately reflect, *inter-alia*, the total hours worked for the pay period. Wage statements provided
27 by DEFENDANTS fail to indicate the "total hours worked" by PLAINTIFF by virtue of
28 DEFENDANTS' automatic deduction for on-duty/shortened/interrupted/missed meal periods, time-

1 rounding practices, mandated pre-shift off-the-clock work, and payment according to scheduled
2 hours instead of actual hours worked as described herein. As a result, the wage statements provided
3 to the Aggrieved Employees were not accurate and do not include all of the statutorily required
4 information, such as, but not limited to, the total hours worked. Accordingly, DEFENDANTS
5 violated Labor Code section 226.

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

17 36. Upon separation of employment, PLAINTIFF's final paycheck was not timely provided,
18 and PLAINTIFF's final paycheck, once provided, did not include all wages owed as it was devoid
19 of, including but not limited to, all owed earned and unpaid minimum wages, overtime wages,
20 premium wages, vacation pay and all accrued paid time off.

21 37. Based on information and belief, DEFENDANTS required PLAINTIFF to agree in
22 writing to unlawful conditions of employment, such as, but not limited to, unlawful criminal and/or
23 financial checks as a condition of obtaining and/or continuing employment, in violation of Labor
24 Code section 432.5. Based on further information and belief, DEFENDANT also required
25 PLAINTIFF to agree in writing to unlawful background checks not in conformity with the
26 requirements of Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq.
27 ("ICRAA") and/or the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), in
28 violation of Labor Code section 432.5. Based on information and belief, DEFENDANT asked about

1 arrests not resulting in convictions on its employment application, in violation of Labor Code section
2 432.7 and or otherwise unlawfully asked about criminal history/unlawfully required the disclosure
3 of criminal history prior to extending a conditional offer of employment and required PLAINTIFF
4 to agree in writing to the unlawful disclosures as a condition of employment, in violation of Labor
5 Code section 432.5.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE**

8 **SECTIONS 2698, ET SEQ.**

9 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all**
10 **Defendants)**

11 38. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

26 41. PLAINTIFF and other Aggrieved Employees were non-exempt employees who
27 regularly worked time for which they were not compensated, resulting in unpaid minimum wages
28 as well as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)

1 hours per week or more than eight (8) hours in a workday or seven (7) consecutive days in a
2 workweek. Aggrieved Employees who worked more than twelve hours in a workday or more than
3 eight (8) hours on the seventh consecutive day of work in a workweek were also denied "double
4 time" wages due to, including but not limited to, DEFENDANTS' failure to relieve Aggrieved
5 Employees of all duties and employer control during any unpaid meal periods, rounded time entries
6 and payment of wages according to scheduled hours worked rather than actual time worked and
7 other policies and practices mandating off-the-clock work as described herein.

8 42. PLAINTIFF and other Aggrieved Employees were not paid for all hours worked
9 because of DEFENDANTS' failure to relieve Aggrieved Employees of all duties and employer
10 control during unpaid meal periods, payment of wages based on scheduled hours and not actual
11 hours worked and/or rounded time entries and other policies and practices mandating off-the-clock
12 work as described herein. Based on information and belief, DEFENDANTS had and continue to
13 have a continuous policy of rounding Aggrieved Employees time punches, including but not limited
14 to, shift start and end time punches. On information and belief, this policy favored DEFENDANTS
15 more often than not, resulting in significant uncompensated time worked by Aggrieved Employees.
16 Based on information and belief, DEFENDANTS had and continue to have a continuous policy of
17 paying Aggrieved Employees for scheduled hours, rather than the time actually reflected on
18 Aggrieved Employees' time records/actual time worked. Based on information and belief,
19 DEFENDANTS required/requires Aggrieved Employees to undergo Covid testing outside of their
20 scheduled shift times without compensating them for the travel time to/from the testing sites, time
21 spent waiting for the tests to be performed, and time spent undergoing testing, resulting in significant
22 off-the-clock work and the underpayment of minimum wages owed to Aggrieved Employees.
23 Based on information and belief, DEFENDANTS required/requires Aggrieved Employees to
24 undergo Covid-related temperature checks prior to clocking in for their shifts each workday,
25 resulting in daily off-the-clock work of at least five (5) minutes for each Aggrieved Employee and
26 the underpayment of minimum and overtime wages owed Aggrieved Employees. Based on
27 information and belief, DEFENDANTS calculated hours of work based on a shift-to-shift workday
28 rather than a midnight-to-midnight workday which failed to take into account all hours worked

1 during overnight shifts which were unaccounted for. This regular performance of off-the-clock work
2 resulted in the underpayment of minimum wages owed to Aggrieved Employees, the underpayment
3 of overtime wages for those Aggrieved Employees who worked more than eight (8) hours per
4 workday or more than forty per week, the underpayment of "double time" wages for those Aggrieved
5 Employees who worked more than twelve (12) hours per workday or more than eight (8) hours on
6 the seventh consecutive day of work, as well as record-keeping violations.

7 43. Based on information and belief, DEFENDANTS further violated California's overtime
8 wage laws by, including but not limited to, failing to incorporate all non-discretionary
9 compensation, including but not limited to, non-discretionary bonus compensation and or shift
10 differential pay/multiple regular rates of pay earned during a pay period, into the regular pay rate
11 used to calculate the overtime rate of pay. Failing to include non-discretionary compensation and or
12 properly blend multiple regular pay rates into the regular pay rate used to calculate the owed
13 overtime rate resulted in a miscalculation of the overtime wage rate, resulting in the underpayment
14 of overtime wages owed to Aggrieved Employees.

15 44. **Meal Breaks.** Under Labor Code sections 226.7, 512, and the applicable IWC Wage
16 Orders, DEFENDANTS was required to provide PLAINTIFF and the Aggrieved Employees with
17 one thirty (30) minute meal break free from all duties for all shifts greater than five (5) but less than
18 ten (10) hours in length, and a second thirty (30) minute meal break free from all duties for all shifts
19 of ten (10) hours or more. The first meal period must be provided before the end of the fifth hour of
20 work and the second meal period before the end of the tenth hour of work. Employers covered by
21 the Wage Orders have an obligation to both (a) relieve their employees for at least one meal period
22 for shifts over five hours, and (b) to record having done so. If the employer fails to properly record
23 a compliant meal period, it is presumed no meal period was provided. PLAINTIFF and other
24 Aggrieved Employees were not provided timely, off-duty, uninterrupted thirty-minute meal periods.
25 PLAINTIFF and other Aggrieved Employees consistently worked shifts of five and one half (5 ½)
26 hours or more. PLAINTIFF and other Aggrieved Employees would not receive a single thirty-
27 minute meal break. DEFENDANTS did not provide PLAINTIFF and other Aggrieved Employees
28 with proper meal breaks. After five (5) hours of work, Aggrieved Employees would be required to

1 work through their meal periods. DEFENDANTS required Aggrieved Employees to clock out for a
2 thirty-minute meal period each shift even though Aggrieved Employees did not always receive
3 uninterrupted, off-duty, thirty-minute meal periods due to a lack of relief nurses available,
4 understaffing, having to monitor a work communication device and/or respond to work
5 communications to attend to patients' needs/situations that arose whenever they arose.
6 DEFENDANTS implemented policies and/or practices that failed to relieve Aggrieved Employees
7 of all duties and employer control during unpaid meal breaks. DEFENDANTS required Aggrieved
8 Employees to remain on the worksite premises and/or monitor a work communication device for
9 communications from management so Aggrieved Employees could attend to any patient/resident
10 situations that arose during their shifts, including during unpaid meal breaks. For example,
11 PLAINTIFF's meal periods were often interrupted/cut short due to calls from management on
12 DEFENDANTS' PA system instructing PLAINTIFF to return to work immediately to attend to one
13 of her patients. Nevertheless, DEFENDANTS deducted thirty minutes per shift for these on-duty,
14 interrupted, shortened and/or missed meal periods, resulting in significant uncompensated work
15 time and the underpayment of minimum and overtime wages owed to Aggrieved Employees.
16 Moreover, Aggrieved Employees consistently worked shifts of more than ten hours without being
17 provided an uninterrupted, off-duty, thirty-minute meal period before the end of the tenth hour of
18 work. Despite not providing PLAINTIFF and other Aggrieved Employees with the first and second
19 meal breaks to which they were legally entitled, DEFENDANTS did not pay any premiums for these
20 missed meal breaks in violation of California law or failed to pay the proper meal period premium
21 for failure to incorporate all non-discretionary compensation, including but not limited to, non-
22 discretionary bonus pay, multiple regular rates of pay and/or shift differential pay, into the regular
23 rate for purposes of calculating the owed meal period premium.

24 **45. Rest Breaks.** PLAINTIFF and other Aggrieved Employees did not receive compliant,
25 net, ten (10)-minute rest periods for every four (4) hours worked (or major fraction thereof), as
26 required by Labor Code 226.7 and the applicable IWC Wage Orders. PLAINTIFF and other
27 Aggrieved Employees regularly worked more than three-and-one-half (3½) hours without being
28 authorized or permitted to take a paid, net, ten (10) minute rest period. DEFENDANTS required

1 PLAINTIFF and other Aggrieved Employees to continuously work without authorizing or providing
2 paid rest periods. Any purported rest periods were interrupted, cut short, on duty, and or late due to
3 the nature and constraints of the Aggrieved Employees' job duties and or commentary from
4 DEFENDANTS pressuring the Aggrieved Employees to skip rest breaks completely/take non-
5 compliant rest breaks. PLAINTIFF and other Aggrieved Employees were unable to avail themselves
6 of their rest breaks for various reasons, including but not limited to, pressure to attend to work tasks
7 immediately and complete their work duties according to a schedule designated by DEFENDANTS
8 that prohibited the taking of compliant rest periods. DEFENDANTS implemented policies and
9 practices that failed to relieve Aggrieved Employees of all duties and employer control during rest
10 periods. Per DEFENDANT's uniform policy and practice, DEFENDANTS required Aggrieved
11 Employees to remain tethered to their worksites and monitor and respond to work communication
12 devices during any rest periods, rendering any purported rest periods on duty or otherwise
13 noncompliant with California law. See *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
14 257. DEFENDANTS did not have a compliant rest period policy in place regarding the taking,
15 proper timing, or duty-free nature of rest periods. Based on information and belief, PLAINTIFF and
16 other Aggrieved Employees were never paid a rest period premium at their respective regular rates
17 of pay for each day an owed rest period was not provided.

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

28 **47. DEFENDANTS knew or had reason to know Aggrieved Employees were working**

1 during unpaid meal periods, prior to clocking in/after clocking out/ otherwise working off-the-clock
2 and not being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to
3 provide PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the
4 wage statements provided by DEFENDANTS do not accurately reflect, inter alia, the correct total
5 hours worked. Due to, including but not limited to, DEFENDANT'S time-rounding and auto-
6 deduction policies and practices, payment according to scheduled hours rather than actual hours
7 worked, and other mandated off-the-clock work policies and practices described herein,
8 DEFENDANT'S wage statements fail to reflect the true total hours worked by PLAINTIFF and the
9 Aggrieved Employees worked, as required under Labor Code section 226(a). Failure to list all hours
10 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
11 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

12 48. DEFENDANTS' failure to accurately list all hours worked on all wage statements
13 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
14 Employees over whether they received all wages owed to them.

15 49. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
16 they could not easily determine whether they received all wages owed to them and whether they
17 were paid for all hours worked.

18 50. Separately, and independent of the above allegation, based on information and belief,
19 DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees further violate
20 Labor Code section 226(a), by failing to list the correct name and address of the legal entity that is
21 the employer.

22 51. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
23 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
24 during which the statute provisions were violated. ¹

25 52. **Record Keeping.** California Labor Code sections 226 and 1174 require DEFENDANTS
26 to keep "accurate and complete" payroll records showing, among other things, the hours worked
27 daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly requires

28 ¹ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 employer to keep time records showing, inter alia, when the employees begin and end each work
2 period and reflecting the true start and end times during which all owed meal periods are provided
3 each day. At all relevant times, DEFENDANTS has failed, and continues to fail, to keep the required
4 time records, as DEFENDANTS has failed to record the true start and end times of PLAINTIFF's
5 and other Aggrieved Employees' workdays and failed to record employee meal periods.
6 DEFENDANT'S failure to keep "accurate and complete" payroll records for PLAINTIFF and the
7 Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all applicable
8 IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under the Labor
9 Code, including without limitation sections 1174.5 and 2699. Each violation of each Labor Code
10 section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

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

22 **54. Refusal to Pay Wages Due.** Labor Code section 216 declares unlawful an
23 employer's refusal to pay wages due and payable and/or DEFENDANTS' denial of the validity of
24 any claim to wages due. DEFENDANTS have violated this section by, inter-alia, failing to pay
25 PLAINTIFF and the Aggrieved Employees for all hours worked at the proper wage rate and by
26 failing to pay PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for
27 each meal or rest period not provided/that was invalid. These violations subject DEFENDANTS to
28

1 civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
2 each aggrieved employee, for each pay period during which the statute provisions were violated.

3 **55. Statutory Wage Violations.** California Labor Code section 223 makes it unlawful for
4 an employer to secretly pay wages lower than required by statute while purporting to pay legal
5 wages. As described above, DEFENDANTS willfully and systematically denied the Aggrieved
6 Employees minimum and overtime wage compensation for all hours worked which resulted in the
7 payment of less than statutorily required wages to them. DEFENDANTS acted with the intent to
8 deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages,
9 to which they were entitled to under California law.

10 **56. Standard Conditions of Labor Violations:** Together, Labor Code sections 1198
11 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
12 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
13 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
14 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
15 meal periods, rest periods, recordkeeping provisions, unreimbursed business expenses, minimum
16 wages and overtime wages result in separate violations of sections 1198 and 1199, which subject
17 DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

18 **57. Unreimbursed Business Expenses.** California law requires employers to indemnify
19 their employees for all necessary expenditures incurred by the employee in direct consequence of
20 the discharge of their duties or of their obedience to the directions of the DEFENDANT. See Cal.
21 Lab. Code section 2802(a) and all applicable Wage Orders, section 9(b). Furthermore, "for purposes
22 of [section 2802], the term 'necessary expenditure or losses' shall include all reasonable costs,
23 including, but not limited to, attorneys' fees incurred by the employee enforcing the rights granted
24 by this section." Cal. Lab. Code section 2802(c). Moreover, "any contract or agreement, express or
25 implied, made by any employee to waive the benefits of this article or any part thereof, is null and
26 void, and this article shall not deprive any employee or his personal representative of any right or
27 remedy to which he is entitled to under the laws of this State." See Cal. Lab. Code section 2804.
28 Among other things, under California law, when tools or equipment are required by the employer

1 or are necessary to the performance of a job, such tools and equipment shall be provided and
2 maintained by employer, except that an employee whose wages are at least two (2) times the
3 minimum wage provided herein may be required to provide and maintain hand tools and equipment
4 customarily required by the trade or craft. See applicable IWC Wage Order, section 9 (b). Among
5 other things, under California law, when employees must use their personal cellphones for work-
6 related purposes, the employer must reimburse them for a reasonable percentage of their cell phone
7 bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show
8 liability, an employee will only need to show that he or she was required to use their personal
9 cellphone for work-related purposes and not reimbursed for the use. Id. 1144-1145. California law
10 also requires employer to reimburse employees for automobile expenses incurred for the business
11 use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. See *Gattuso*
12 *v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. PLAINTIFF and other Aggrieved Employees
13 were improperly required to provide and maintain work tools that are supposed to be the
14 responsibility of the DEFENDANT. As a pattern and practice, DEFENDANTS regularly failed to
15 reimburse and indemnify PLAINTIFF and other Aggrieved Employees for business expenses.
16 Pursuant to California Labor Code section 2802, PLAINTIFF and other Aggrieved Employees were
17 entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their
18 DEFENDANTS and/or carrying out the duties assigned by DEFENDANT. Based on information
19 and belief, PLAINTIFF and other Aggrieved Employees were improperly required to pay for
20 business expenses that are supposed to be the responsibility of DEFENDANT, including but not
21 limited to, cell phone/data plan charges and or costs associated with having to purchase or maintain
22 work uniforms/work clothing and or use their personal vehicles in the discharge of their job duties.
23 Based on information and belief, PLAINTIFF and other Aggrieved Employees were improperly
24 required to use their personal cellphones to communicate and conduct work-related activities. For
25 example, PLAINTIFF was required to use her personal cellphone/mobile communication device to
26 communicate and/or conduct work-related activities, such as but not limited to, to receive text
27 messages and/or calls from DEFENDANTS regarding, e.g., scheduling. DEFENDANTS did not
28 reimburse PLAINTIFF for these business-related expenses she was required to incur as a direct

1 consequence of the discharge of her job duties. Based on information and belief, DEFENDANTS
2 required Aggrieved Employees to travel to Covid-testing sites for Covid testing without providing
3 any/full reimbursement for the travel expenses (e.g., bus fare) and or personal vehicle expenses (e.g.,
4 gas, vehicle wear and tear) incurred in connection with DEFENDANTS' testing requirements.
5 DEFENDANTS did not compensate for these vehicle-related expenses and or the amount offered
6 fell far below the Internal Revenue Service (IRS) mandated per mile compensation for the relevant
7 period. DEFENDANT'S failure to provide Aggrieved Employees with full reimbursement for all
8 reasonable expenses associated with carrying out their duties required that Aggrieved Employees
9 subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

10 **58. Background Check Violations/Unlawful Agreements/Unlawful Inquiries into**
11 **Criminal History.** Labor Code section 432.5 provides that "no employer...shall require any
12 employee or applicant for employment to agree, in writing, to any term or condition which is known
13 by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS
14 required PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of
15 employment, such as, but not limited to, unlawful criminal and/or financial checks as a condition of
16 obtaining and/or continuing employment in violation of Labor Code section 432.5.

17 **59.** The California Labor Code places certain procedural and substantive limits on an
18 employer's ability to conduct employee background checks and on how employers can use the
19 information they obtain through these background checks. Upon information and belief,
20 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit or agree to submit
21 to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
22 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
23 and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in
24 writing to unlawful background checks not in conformance with the requirements of the
25 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
26 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
27 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of
28 employment, in violation of Labor Code section 432.5. Based on information and belief,

1 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to agree in writing to a
2 background check which failed to abide by the requirements set forth in CA Civil Code section
3 1786, et seq. and 15 U.S.C. section 1681, et seq., by including but not limited to, failing to provide
4 a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information
5 (including but not limited to, information that is solely relevant to applicants from different states),
6 failing to provide a lawful purpose for the background check, failing to provide a summary of rights
7 under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request
8 a copy of the report, and failing to properly obtain authorization or consent to such a background
9 check, and thus was an unlawful background check. Based on information and belief,
10 DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in writing to
11 provide ongoing consent to DEFENDANTS to conduct background checks throughout the duration
12 of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in
13 a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to
14 an unlawful provision as a condition of employment.

15 60. Labor Code section 432.7 prohibits an employer from asking applicants about past
16 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
17 information and belief, DEFENDANTS asked PLAINTIFF and Aggrieved Employees about arrests
18 not resulting in convictions on its employment application, in violation of California law

19 61. Upon information and belief, DEFENDANTS, in violation of California law, including
20 but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”),
21 asked PLAINTIFF and Aggrieved Employees about convictions prior to extending an offer of
22 employment and/or otherwise impermissibly inquired into criminal history on its employment
23 application in violation of California law.

24 62. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
25 Code 432.7. By asking about convictions at the application phase or prior to extending an
26 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
27 Labor Code 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to disclose
28 arrests and/or convictions as a condition of employment.

1 63. These violations subject DEFENDANTS to civil penalties under the Labor Code,
2 including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each
3 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
4 civil penalty

5 **64. Sick Leave Violations:** DEFENDANTS violated California's paid sick leave laws
6 including, Labor Code sections 245-248.5; DEFENDANTS failed to provide proper sick leave to
7 Aggrieved Employees, due to, including but not limited to, DEFENDANTS' failure to account for
8 the actual hours worked by virtue of DEFENDANTS' failure to relieve Aggrieved Employees of all
9 duties and employer control during any unpaid meal periods, mandated pre-shift/post-shift off-the-
10 clock work, payment according to scheduled hours rather than actual time worked and time-
11 rounding policies and practices, as described herein, and or DEFENDANT'S failure to incorporate
12 all forms of non-discretionary remuneration, including but not limited to, non-discretionary bonuses,
13 shift differential pay/multiple regular pay rates, into the sick pay calculation. DEFENDANTS
14 further failed to put the Aggrieved Employees on notice of their paid sick leave rights - or thereby
15 putting their entitlement to sick leave in a Labor Code section 2810.5 notice. DEFENDANTS failed
16 to maintain accurate records documenting the hours worked and paid sick days accrued and used by
17 the Aggrieved Employees, in violation of Labor Code section 247.5. DEFENDANTS failed to
18 provide notice of the accrued sick leave amount or balance left for the Aggrieved Employees by
19 failing to provide Aggrieved Employees with a wage statement or separate writing showing the
20 balance of accrued or available sick leave, or paid time off leave provided in lieu of sick leave, on
21 their designated pay dates with the their payment of wages, as required under Labor Code section
22 246, and thus affected Aggrieved Employees' intelligent exercise of their paid sick leave. But for
23 this failure, Aggrieved Employees who are no longer employed with DEFENDANTS would have
24 used their paid sick leave at least prior to their respective separations, or on several occasions after
25 receiving notice of the available sick leave.

26 65. Under the provisions of PAGA and the above-mentioned Labor Code sections, including
27 but not limited to Labor Code sections 201, 202, 203, 210, 225.5, 226, 226.3, 226.7, 245, 247.5,
28 248, 248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1197, 1197.1, 1198, 1199,

1 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all interpretations of these
2 laws by California Courts and administrative bodies, as well as any other law that is enforceable
3 through PAGA, DEFENDANTS are liable for the following penalties:

- 4 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
5 relevant California Labor Code provisions listed herein only if permitted by the
6 PAGA statute, pursuant to Labor Code section 2699(a); and
7 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
8 violations without a civil penalty recoverable under the PAGA, all in the default
9 amounts provided by Labor Code section 2699(f).
10 c. The proper measure of penalties under PAGA is the number of violations,
11 whether those violations were committed as against Plaintiff or any Aggrieved
12 Employee, whether a party to this action or not.

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

15 **PRAYER FOR RELIEF**

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

- 18 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
19 25% payable to Aggrieved Employees);
20 2. For reasonable attorney's fees and costs of suit; and
21 3. For such other and further relief that the Court deems just and proper.

22 Dated: March 21, 2022

CROSNER LEGAL, PC

23
24 By: 
25 Michael R. Crosner, Esq.
26 Zachary M. Crosner, Esq.
27 Blake R. Jones, Esq.
28 Sepideh Ardestani, Esq.
Attorneys for Plaintiff,
RHINA VILLEDA

EXHIBIT

1



CROSNER LEGAL

Public Interest Rights

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November 29, 2021

VIA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Samuel T Oden
Agent for Service of Process for:
Solheim Lutheran Home
2236 Merton Avenue
Los Angeles, California 90041

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
Solheim Lutheran Home
Date: November 29, 2021
Subject: *Rhina Villeda v. Solheim Lutheran Home*

Introduction

This office represents COMPLAINANT, Rhina Villeda (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: Solheim Lutheran Home (hereinafter “EMPLOYER”). EMPLOYER may be contacted directly at the address 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, 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.

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

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

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

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

Solheim Lutheran Home dba Solheim Senior Community and its managing agents own, operate, or otherwise manage a senior living/retirement home in Los Angeles (Eagle Rock), California, that provides residential living, assisted living, skilled nursing, rehabilitation, and memory care services to seniors. While EMPLOYER may operate a successful company or have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER from in or about 1994 until the termination of COMPLAINANT's employment, in January 2021. COMPLAINANT's job title was Certified Nursing Assistant ("CNA"). COMPLAINANT's typical shift was from 7:00 a.m. to 3:00 pm. COMPLAINANT was occasionally scheduled to work shifts lasting longer than eight (8) hours.

EMPLOYER failed to compensate COMPLAINANT for all hours worked by virtue of its time-rounding policies and practices and auto-deduction policy and practice for on-duty, interrupted, shortened and or missed meal periods, as described herein. EMPLOYER required COMPLAINANT to clock out for a thirty-minute meal period each shift even though COMPLAINANT rarely, if ever, received uninterrupted, off-duty, thirty-minute meal periods due to a lack of relief nurses available, understaffing, having to constantly monitor work communication devices and respond to work communications and or attend to patients' needs/situations that arose whenever they arose. For example, COMPLAINANT's meal periods were consistently interrupted/cut short by calls on EMPLOYER's PA system instructing COMPLAINANT to return to work immediately to attend to one of the patients. Nevertheless, EMPLOYER deducted thirty minutes per shift for these on-duty, interrupted, shortened and or missed meal periods, resulting in significant uncompensated work time and the underpayment of minimum and overtime wages owed COMPLAINANT.

COMPLAINANT's work schedule typically entitled her to two (2) rest periods per shift. However, COMPLAINANT was consistently unable to take ten-minute, off-duty rest periods for every four (4) hours worked or major fraction thereof. COMPLAINANT rarely, if ever, received ten-minute, uninterrupted, off-duty, rest periods due to a lack of relief nurses available, understaffing, having to constantly monitor work communication devices and respond to work communications and or attend to patients' needs/situations that arose whenever they arose, including during any rest periods. EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT of all duties and employer control during any rest periods. For example, per EMPLOYER's policy, COMPLAINANT was prohibited from leaving the work premises during any rest periods and thus remained under employer control during any rest periods, rendering said rest periods noncompliant with California law. EMPLOYER never paid COMPLAINANT any rest period premium for any missed/non-compliant rest period.

COMPLAINANT and other AGGRIEVED EMPLOYEES were pressured to complete their work tasks according to EMPLOYER's designated schedule and attend to the patients' needs throughout their shifts, such that meal and rest breaks were only taken when time permitted, were always on-duty and rarely, if ever, uninterrupted, timely, and or the proper length.

Based on information and belief, EMPLOYER failed to properly accrue and pay all owed sick leave wages. EMPLOYER either failed to provide paid sick leave at all or failed to base the owed sick leave on the actual hours worked due to EMPLOYER's time-shaving and auto-deduction policies and practices for meal periods. Based on further information and belief, failed to incorporate all non-discretionary remuneration, such as, shift differential pay and or multiple regular pay rates into the sick leave pay calculation, resulting in the denial of owed sick leave wages.

EMPLOYER further failed to furnish COMPLAINANT and other AGGRIEVED EMPLOYEES with accurate and complete wage statements that complied with Labor Code section 226. EMPLOYER's wage statements fail to list the true "total hours worked" by COMPLAINANT due to EMPLOYER's time-rounding and auto-deduction policies and practices as applied to on-duty, shortened, and or missed meal periods, as alleged herein.

Based on information and belief, EMPLOYER required COMPLAINANT and other AGGRIEVED EMPLOYEES to incur business expenses that are supposed to be the responsibility of the employer, such as, but not limited to, expenses incurred in connection with the purchase and or maintenance of work uniforms/work clothing, cellphone/mobile device and or vehicle-related expenses. EMPLOYER failed to reimburse COMPLAINANT and other AGGRIEVED EMPLOYEES for these business-related expenses, in violation of Labor Code section 2802.

Based on information and belief, as a condition of hire/maintaining employment, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to undergo a financial, personal and or criminal background check. Based on further information and belief, EMPLOYER failed to comply with the disclosure and formatting requirements of the Investigative Consumer Reporting Agencies Act ("ICRAA") and or the Fair Credit Reporting Act ("FCRA"), and EMPLOYER required COMPLAINANT and other AGGRIEVED EMPLOYEES to sign off on the unlawful background checks, in violation of California Labor Code section 432.5.

Based on information and belief, EMPLOYER asked about arrests on its employment application in violation of Labor Code section 432.7 and or asked about criminal convictions prior to extending a conditional offer of employment in violation of the Fair Employment and Housing Act ("FEHA") and required COMPLAINANT and other AGGRIEVED EMPLOYEES to agree in writing to the unlawful disclosures as a condition of employment, in violation of Labor Code section 432.5.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES due to its time-rounding and meal period auto-deduction policies and practices described herein; (2) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked due to EMPLOYER's time-rounding/time-shaving policies and practices and other mandated off-the-clock work described herein; (3) failed and continues to fail to pay employees at least minimum wage for all hours worked and overtime/regular rates for corresponding work due to, including but not limited to, failure to incorporate all non-discretionary remuneration and or multiple regular pay rates into the overtime rate calculation; (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 and continues to make unlawful deductions from COMPLAINANT and similarly AGGRIEVED EMPLOYEES' paychecks; (9) failed and continues to fail to timely pay all earned 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) conducted and continues to conduct illegal background checks as a condition of hire and or of maintaining employment; and (12) requires COMPLAINANT and similarly AGGRIEVED EMPLOYEES to impermissibly disclose arrests on their employment applications and or criminal conviction history prior to making a conditional of employment and to 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 time rounding and auto deduction policies and practices and other mandated off-the-clock work, described herein.

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

Additionally, EMPLOYER failed to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable 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.* 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

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

§ 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to provide an employee a meal period in accordance with the employee’s regular rate of compensation for each workday that the meal period is not provided”).

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

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

EMPLOYER implemented a policy and practice of automatically deducting 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. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were required at all times to remain onsite, monitor their work communication devices, and attend to any patient/resident situations that arose during their shifts, including during unpaid meal breaks. Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of meal periods owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California’s meal period laws.

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

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

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices

resulted in the denial of meal periods owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER never paid COMPLAINANT and other AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper meal period was not provided. 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, shift differential pay into the regular pay 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 §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.

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").

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were pressured to complete their work tasks according to a designated schedule and attend to the patients' needs throughout their shifts such that rest breaks were only taken once tasks were completed/if time permitted, were always on-duty and rarely, if ever, uninterrupted, timely, and or ten minutes in length.

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.

EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT and other AGGRIEVED EMPLOYEES of all duties and employer control during any rest periods. For example, EMPLOYER had a policy of requiring COMPLAINANT and other AGGRIEVED EMPLOYEES to remain on the work premises and monitor for and respond to any calls over EMPLOYER's PA system at all times during their shifts, including during any rest periods, rendering any purported rest periods noncompliant with California law. "One cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods. [emphasis added]." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide premium pay for these on-duty, missed, late, shortened or interrupted rest periods, as alleged above, Employer willfully violated the provisions of Labor Code section 226.7.

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

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").

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.” Labor Code section 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 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...” Labor Code section 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, payment according to scheduled hours worked instead of actual time worked, mandated pre-shift and post-shift off-the clock work 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 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.

EMPLOYER implemented a policy and practice of automatically deducting 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 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.

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

Based on information and belief, EMPLOYER required/requires AGGRIEVED EMPLOYEES to undergo Covid testing outside of their scheduled shift times without compensating them for the travel time to/from the testing sites, time spent waiting for the tests to be performed, and time spent undergoing testing, resulting in significant off-the-clock work and the underpayment of minimum wages owed to AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER required/requires AGGRIEVED EMPLOYEES to undergo Covid-related temperature checks prior to clocking in for their shifts each workday, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER calculated hours of work based on a shift-to-shift work-day rather than a midnight to midnight work day which failed to take into account all hours worked during overnight shifts which were unaccounted for. This off-the-clock work resulted in not only record-keeping violations but also the underpayment of minimum and overtime wages to 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, failure to properly calculate and account for all hours worked during overnight shifts and other mandated off-the-clock work described above resulted in the underpayment of minimum wages owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

Based on information and belief, EMPLOYER had actual or constructive knowledge that its time-rounding policies and practices as well as other mandated off-the-clock work 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 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

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 “in addition to any other civil penalties provided by law, any employer or any other person acting

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.

Namely, EMPLOYER's time-rounding/time-shaving and auto deduction policies and practices and other policies and practices resulting in off-the-clock work as described herein and thus the underpayment of earned minimum wages also resulted in the underpayment of earned overtime wages for those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Additionally, based on information and belief, EMPLOYER sometimes paid AGGRIEVED EMPLOYEES multiple rates of pay in one pay period for the same kind of work but failed to average the rates of pay when calculating overtime. Under California law, "[w]here two rates of pay are paid during a workweek, the California method for determining the regular rate of pay for calculating overtime in that workweek mirrors the federal method, based upon the weighted average of all hourly rates paid." DLSE Manual 49.2.5 (citing 29 CFR § 778.115). This "weighted average" method provides, "[w]here an employee in a single workweek works at two or more different types of work for which different non-overtime rates of pay (of not less than the applicable minimum wage) have been established, their regular rate for that week is the weighted average of such rates. That is, the total earnings (except statutory exclusions) are computed to include his compensation during the workweek from all such rates, and are then divided by the total number of hours worked at all jobs. . ." 29 CFR § 778.115. EMPLOYER's failure to average the rates of pay when calculating overtime resulted in underpaid overtime wages at times, as well as inaccurate and incomplete wage statements.

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.

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").

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 period, EMPLOYER failed to provide paid sick leave at all to AGGRIEVED EMPLOYEES or failed to properly accrue 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 time rounding and other mandated off-the-clock work, as described herein) and or failure to incorporate all forms of non-discretionary compensation, including but not limited to, shift pay differential and or non-discretionary bonus pay into the sick pay calculation.

EMPLOYER further failed to put AGGRIEVED EMPLOYEES 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 period.

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

But for this failure, AGGRIEVED EMPLOYEES who are no longer employed by EMPLOYER would have used their paid sick leave at least prior to their respective separations, 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

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”).

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 failing to provide 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.

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 rates 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

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).

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

Among other things, EMPLOYER's wage statements that it provided to COMPLAINANT and all AGGRIEVED EMPLOYEES fail to list the "total hours worked" by the COMPLAINANT and all AGGRIEVED EMPLOYEES, by virtue of EMPLOYER's time-rounding and auto deduction policies and practices and other mandated off-the-clock work, all described in greater detail *supra*, a stand-alone violation of Labor Code section 226(a).

Based on information and belief, EMPLOYER's wage statements fail to display the legal entity name and address of EMPLOYER or a registered DBA, in violation of Labor Code section 226(a).

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

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

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. Labor Code section 202 imposes timing requirements for the provision of final paychecks for employees who resign. 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 AGGRIEVED EMPLOYEES who are no longer employed by EMPLOYER all wages that were due and owing upon termination or resignation.

Upon separation of employment, based upon information and belief, COMPLAINANT and 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

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

Among other things, under California law, when tools or equipment are required by the employer

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").

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, § 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 § 2804.

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

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.

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 having to purchase or maintain work uniforms/work clothing and or use their personal vehicles in the discharge of their job duties.

Based on information and belief, COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to use their personal cellphones to communicate and conduct work-related activities, such as but not limited to, to receive text messages and or calls from EMPLOYER regarding, e.g., scheduling.

Based on information and belief, EMPLOYER required AGGRIEVED EMPLOYEES to travel to Covid-testing sites for Covid testing without providing any/full reimbursement for the travel expenses (e.g., bus fare) and or personal vehicle expenses (e.g., gas, vehicle wear and tear) incurred in connection with EMPLOYER's testing requirements.

EMPLOYER did not compensate for these vehicle-related expenses and or the amount offered fell far below the Internal Revenue Service (IRS) mandated per mile compensation for the relevant period.

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

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.

Based on information and belief, EMPLOYER required AGGRIEVED EMPLOYEES to disclose criminal conviction history prior to extending a conditional offer of employment, in violation of the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA").

Based on information and belief, EMPLOYER asked about arrests not resulting in convictions on its employment application, in violation of Labor Code section 432.7, and EMPLOYER required AGGRIEVED EMPLOYEES to sign off on the unlawful disclosures/otherwise agree in writing to the disclosure of the impermissible criminal background check questions as a condition of employment, in violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required 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 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.”).

Based on information and belief, EMPLOYER, in violation of California law, including but not limited to, Labor Code section 432.7 and the Fair Chance Act (part of the FEHA), asked about arrests not resulting in convictions on its employment application, asked about convictions prior to extending a conditional offer of employment to AGGRIEVED EMPLOYEES and or otherwise impermissibly inquired into criminal history on its employment application in violation of California law. By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions on the employment application or prior to extending a conditional employment offer, EMPLOYER violated the Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring the AGGRIEVED EMPLOYEES to agree in writing to disclose arrests or convictions as a condition of employment.

Non-Compete/Non-Solicitation Agreements – Violation of Labor Code Section 432.5

Non-compete/non-solicitation agreements are illegal under California law. See California Business & Professions Code section 16600 - stating any non-compete provision between an employer and an employee, i.e., any contract that restrains a person from engaging in a profession, trade or business will not be enforceable under California law. California Labor Code section 432.5 states that it is illegal for an employer to require an employee to agree in writing to any term that the employer knows is illegal. Violations of Section 432.5 are actionable under the California Labor Code Private Attorneys’ General Act (“PAGA”).

Based upon information and belief, EMPLOYER required AGGRIEVED EMPLOYEES to sign non-compete/non-solicitation agreements as a condition of hire/maintaining employment. This is illegal under California law. By having AGGRIEVED EMPLOYEES sign off on the illegal non-compete/non-solicitation agreements as a condition of employment, EMPLOYER violated, inter-alia, 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.”). Accordingly, AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

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 signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC