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County of Alameda

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTRY OF ALAMEDA**

DELANEY HUFF, on behalf of the LWDA and
all other aggrieved employees,

PLAINTIFF,

vs.

CHARTWELL STAFFING SERVICES, INC., a
New York Corporation; THYSSENKRUPP
INDUSTRIAL SERVICES N.A., INC., a
Wisconsin Corporation, and DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO.: **22CV005892**

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS'
GENERAL ACT OF 2004, CALIFORNIA
LABOR CODE § 2698 et seq.**

1 Plaintiff DELANEY HUFF (“PLAINTIFF”), on behalf of the LWDA and all other aggrieved
2 employees, alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of the LWDA and all other aggrieved employees
5 of Defendants CHARTWELL STAFFING SERVICES, INC. (“CHARTWELL”) and
6 THYSSENKRUPP INDUSTRIAL SERVICES N.A., INC. (“THYSSENKRUPP”) (collectively,
7 “DEFENDANTS”) to recover civil penalties arising from unpaid minimum wages earned and due,
8 unlawful rest break policies and practices, failure to provide accurate itemized wage statements, and
9 failure to timely pay wages during employment.

10 **THE PARTIES**

11 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
12 PLAINTIFF was employed and/or jointly employed by DEFENDANTS in the State of California as an
13 hourly, non-exempt employee.

14 3. DEFENDANT CHARTWELL is a New York corporation headquartered in Lancaster,
15 Pennsylvania. CHARTWELL is a staffing agency providing, among other things, temporary, temporary,
16 temporary to hire, and direct hire, services. CHARTWELL is authorized to transact and conduct
17 business in the State of California and does transact and conduct business in the State of California and
18 the Country of Alameda.

19 4. DEFENDANT THYSSENKRUPP is a Wisconsin corporation headquartered in
20 Southfield, Michigan. THYSSENKRUPP is a multinational conglomerate with a focus on industrial
21 engineering and steel production. THYSSENKRUPP is authorized to transact and conduct business in
22 the State of California and does transact and conduct business in the State of California and the County
23 of Alameda.

24 5. CHARTWELL STAFFING SERVICES, INC. and THYSSENKRUPP INDUSTRIAL
25 SERVICES N.A., INC. employed and/or jointly employed PLAINTIFF and other aggrieved persons in
26 the State of California.

27 6. The true names and capacities, whether individual, corporate, associate, or otherwise, of
28 DEFENDANTS sued herein as DOES 1 to 50, inclusive, are currently unknown to PLAINTIFF, who

1 therefore sues DEFENDANTS by such fictitious names under Code of Civil Procedure § 474.
2 PLAINTIFF is informed and believes, and based thereon alleges, that each of the DEFENDANTS
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
4 herein. PLAINTIFF will seek leave of court to amend this Complaint to reflect the true names and
5 capacities of the DEFENDANTS designated hereinafter as DOES when such identities become known.

6 7. PLAINTIFF is informed and believes, and based thereon alleges, that each
7 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
8 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
9 DEFENDANT are legally attributable to the other DEFENDANTS. Accordingly, all DEFENDANTS
10 engaged, suffered, and permitted PLAINTIFF and all other Aggrieved Employees to perform services
11 from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over
12 the wages, hours and/or working conditions over PLAINTIFF and all Aggrieved Employees at all
13 relevant times herein, so as to be considered the joint employers of all of the Aggrieved Employees. By
14 reason of their status as joint employers, they are each liable for civil penalties for violation of the
15 California Labor Code as to the PLAINTIFF and other Aggrieved Employees as set forth herein.

16 **JURISDICTION AND VENUE**

17 8. The Superior Court of the State of California has jurisdiction in this matter because
18 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
19 California and regularly conducts business in the State of California.

20 9. No federal question is at issue because the claims are based exclusively on California
21 state law.

22 10. Venue is proper in this judicial district and the County of Alameda, California, because
23 among other things, PLAINTIFF and the other aggrieved employees performed work for
24 DEFENDANTS in the County of Alameda; DEFENDANTS maintains grounds, facilities, and offices,
25 and transacts business, in the County of Alameda; DEFENDANTS' unlawful policies, procedures, and
26 practices, which are the subject of this action, were applied, at least in part, to PLAINTIFF and other
27 aggrieved employees in the County of Alameda; and DEFENDANTS' unlawful acts and omissions
28 occurred in the County of Alameda.

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1 amount of this minimum wage.” The applicable Industrial Welfare Commission (“IWC”) Wage
2 Order(s), including Wage Order No. 4-2001 obligate employers to pay each employee minimum wages
3 for all hours worked.

4 15. These minimum wage standards apply to each hour employees worked for which they
5 were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an
6 employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not,
7 results in an average hourly wage above minimum wage. *Armenta v. Osmose*, 135 Cal.App.4th 314, 324
8 (2005).

9 16. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
10 PENALTY PERIOD and in violation of Labor Code Sections 1194 and 1197 and the applicable IWC
11 Wage Order(s), DEFENDANTS failed to pay PLAINTIFF and other aggrieved employees the
12 applicable minimum wages for all hours worked in a payroll period by, among other things: requiring,
13 suffering, or permitting PLAINTIFF and other aggrieved employees to perform COVID-19 temperature
14 checks before the start of their shifts, and before they “clocked in,” which is compensable time.

15 17. Although Defendants maintained a common policy and practice of requiring PLAINTIFF
16 and the aggrieved employees to undergo pre-shift COVID-19 temperature checks during the PAGA
17 PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the other aggrieved employees for
18 such time.

19 18. PLAINTIFF is informed and believes, and based thereon alleges, that beginning around
20 March 2020 and continuing to the present, PLAINTIFF and aggrieved employees were given a
21 temperature check by DEFENDANTS, while off-the- clock, before being allowed to clock in for their
22 shifts.

23 19. Employees must be paid for all “hours worked.” Hours worked is “the time during which
24 an employee is subject to the control of an employer, and includes all the time the employee is suffered
25 or permitted to work, whether or not required to do so.” *See* IWC Wage Order Nos. 1-2001 and 7-2001,
26 Subd. 2(G); *see also Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833 (2015). “[I]t is only
27 necessary that the worker be subject to the control of the employer in order to be entitled to
28 compensation.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584 (2000). An employee is under the

1 employer's control and entitled to compensation when the employer "directs, commands or restrains'
2 an employee." *Id.* at 583 (citation omitted).

3 20. As the California Supreme Court made clear in *Morillion*, when determining whether an
4 employee's activity is under the employer's control entitling him or her to compensation, the import is
5 not whether the employer requires the activity and thus whether employees can avoid it, but the level of
6 control employers exert over employees during the activity: "The level of the employer's control, *rather*
7 *than the mere fact that the employer requires the employees' activity is determinative.*" *Morillion*, 22
8 Cal.4th at 587 (emphasis added).

9 21. In *Frlekin v. Apple Inc.*, the California Supreme Court reaffirmed its holding in *Morillion*
10 that "[t]he level of the employer's control over its employees, rather than the mere fact that the employer
11 requires the employees' activity, is determinative" concerning whether an activity is compensable under
12 the "hours worked" control clause. *Frlekin*, 8 Cal. 5th 1038, 1051 (2020) (citing *Morillion*, 22 Cal. 4th
13 at 587). In *Frlekin*, the California Supreme Court found that time employees spent undergoing bag
14 searches for security purposes at the end of their shifts was compensable. The Court reasoned its decision
15 by analyzing factors in determining whether an employer has exerted compensable control over
16 employees:

17 We also emphasize that whether an activity is required remains probative in determining whether
18 an employee is subject to the employer's control. But, at least with regard to cases
19 involving *onsite* employer-controlled activities, the mandatory nature of an activity is not the
20 only factor to consider. We conclude that courts may and should consider additional relevant
21 factors—including, but not limited to, the location of the activity, the degree of the employer's
22 control, whether the activity primarily benefits the employee or employer, and whether the
23 activity is enforced through disciplinary measures—when evaluating such employer-controlled
24 conduct.
25 *Id.* at 1056.

26 22. To be free of the employer's control for purposes of "hours worked," the employee must
27 be free to use his or her time "effectively for his or her own purposes." *Morillion*, 22 Cal.4th at 583.

28 23. Here, as in *Frlekin*, DEFENDANTS' Aggrieved Employees could not avoid
DEFENDANTS' COVID-19 temperature checks (which took place on DEFENDANTS' premises and
before they could clock in) and related time spent in COVID screenings, and could not then use their

1 time effectively for their own purposes. As such, DEFENDANTS exercised compensable control over
2 the Aggrieved Employees undergoing and who underwent COVID-19 temperature checks, and stood in
3 line to do so, and owes wages to the Aggrieved Employees for this time. Notably, there is no de minimis
4 defense for such time. *See, Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018) (the California Supreme
5 Court held that, in light of new technologies allowing time-tracking with specificity, the de minimis
6 principle was not applicable in the context of an alleged policy requiring employees to work minutes off
7 the clock routinely); *see also, Frlekin*, 8 Cal.5th at 1046 (“hours work is defined as the time during
8 which an employee is subject to the control of an employer, and includes all the time the employee is
9 suffered or permitted to work, whether or not required to do so[.]” including time spent on-site
10 undergoing security checks”).

12 24. The California Department of Industrial Relations recently issued guidance that supports
13 PLAINTIFF’S claim that DEFENDANTS unlawfully failed to pay her and the Aggrieved Employees
14 for time associated with worksite temperature checks before clocking in for their shifts. See Cal. Dept.
15 of Industrial Relations, Safe Reopening FAQs for Workers and Employers (July 8, 2021), available at
16 https://www.dir.ca.gov/covid19/FAQs_COVID-19_Safe_Reopening.htm, which provides the
17 following in regard to FAQ #10 (titled “Medical Checks, Testing, and Vaccinations”):
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20 **10. Q: Must my employer pay me for time spent at my employer’s worksite completing
certain medical checks (including temperature checks) before beginning a shift?**

21 A: Yes. Employers must pay workers for all hours worked, including time that a worker is under
22 the control of the employer. Employers that require their workers to complete a medical check
23 to begin a shift, even if it is recommended under public health orders, must compensate workers
for that time worked.

24 The term “hours worked” means the time during which a worker is subject to the control of an
25 employer and includes all the time the worker is suffered or permitted to work, whether or not
26 required to do so. Under this definition, one way to determine whether time a worker spends
performing a task is compensable—that is, whether it is time “worked”—is whether the
employer exercised control over the worker by requiring the worker to perform that task.

27 If an employer requires that all workers perform a medical check (such as a temperature check)
onsite before beginning a shift, the time completing the medical check, including any time
28 waiting in line, would constitute time worked. This requirement applies even if such tasks were

1 performed pursuant to a state or local public health guideline, because the check is done at the
2 request and thus under the control of the employer.

3 25. The United States Department of Labor has also said that pre-shift temperature checks
4 are compensable “for many employees” if the checks are “necessary” to the employee’s job.

5 <https://www.dol.gov/agencies/whd/flsa/pandemic>. The Department provided the following example:

6 For many employees, undergoing a temperature check before they begin work must be paid
7 because it is necessary for their jobs. If a nurse who performs direct patient care services at a
8 hospital is required to check her temperature upon arrival at the hospital before her shift, the time
9 that she spends checking her temperature upon entry to the worksite is likely compensable
because such a task is necessary for her to safely and effectively perform her job during the
pandemic.

10 26. Through its policy and practice of requiring PLAINTIFF and the aggrieved employees to
11 undergo pre-shift COVID-19 temperature checks and paperwork, DEFENDANTS violated Labor Code
12 Section 1194.

13 27. As a result of DEFENDANTS’ policy and practices described above, DEFENDANTS
14 regularly failed to pay PLAINTIFF and all aggrieved employees for all hours worked in violation of
15 Labor Code Sections 1194 and 1197.

16 **Failure to Provide Compliant Rest Periods and Failure to Pay Premium Wages**

17 **(Labor Code §§ 226.7; IWC Wage Order No. 4-2001, § 12)**

18 28. At all relevant times, as part of DEFENDANTS’ illegal policies, procedures, and
19 practices to deprive their current and former non-exempt employees all wages earned and due,
20 DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees
21 as required pursuant to Labor Code Section 226.7, and IWC Wage Order No. 4-2001, § 12.

22 29. Under IWC Wage Order 4-2001, Section 12(A), an employer in California must
23 authorize and permit all employees to take ten (10) minute duty-free rest periods for every major fraction
24 of four hours worked. Cal. Labor Code § 226.7(b) provides that “an employer shall not require an
25 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
26 or applicable regulation, standard, or order of the Industrial Welfare Commission. . . .” Further, “[i]f an
27 employer fails to provide an employee with a meal or rest period in accordance with a state law,
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1 including, but not limited to, an applicable statute or applicable regulation, standard, or order of the
2 Industrial Welfare Commission, . . . the employer shall pay the employee one additional hour of pay at
3 the employee's regular rate of compensation for each workday that a meal or rest or recovery period is
4 not provided." Cal. Labor Code § 226.7(c).

5 30. The California Supreme Court made plain in *Brinker Rest. Corp. v. Superior Court*, 53
6 Cal. 4th 1004 (2012) that the adoption of an unlawful policy gives rises to liability for violation of the
7 wage order:

8 An employer is required to authorize and permit the amount of rest break time called
9 for under the wage order for its industry. If it does not—if, for example, it *adopts a*
10 *uniform policy authorizing and permitting only one rest break for employees working*
11 *a seven-hour shift when two are required*—it has violated the wage order and is
12 liable.

13 *Id.* at 1033. (Emphasis added.). The Court held further that “[n]o issue of waiver ever arises for
14 a rest break that was required by law but never authorized; if a break is not authorized, an
15 employee has no opportunity to decline to take it.” *Id.*; accord *Alberts v. Aurora Behavioral*
16 *Health Care*, 241 Cal. App. 4th 388, 410 (2015) (“If an employer fails to provide legally
17 compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip
18 those breaks.”).

19 31. In *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), the California
20 Supreme Court held that ABM's on-call policy of requiring security guards to keep their radios
21 and pagers on at all times, and to remain vigilant and respond when needs arise, including during
22 rest breaks, violated its duty to provide duty-free rest breaks as required by § 226.7 and § 12 of
23 the applicable Wage Order. *Id.* at 260-61, 270. With strong implications for the issue here, the
24 Court declared “. . . one cannot square the practice of compelling employees to remain at the
25 ready, *tethered by time and policy to particular locations or communication devices*, with the
26 requirement to relieve employees of all work duties and employer control during 10-minute rest
27 breaks.” *Augustus*, 2 Cal. 5th at 269 (emphasis added).

28 32. Subsequent to the decision in *Augustus*, the DLSE in November 2017 revised its
website so as to specifically address the issue of on-premises rest break policies. Through the

1 amendment, the DLSE subscribed to the clear implication of *Augustus* that requiring employees
2 to stay on the work premises during rest periods does not relinquish control and accordingly does
3 not comply with California law. Specifically, following a summary of California’s rest break
4 laws, the DLSE’s website states a series of questions and answers, including the following
5 Question and Answer No. 5:

6 5. Q. Can my employer *require that I stay on the work premises during my rest period?*

7 A. *No, your employer cannot impose any restraints not inherent in the rest period*
8 *requirement itself. In Augustus v. ABM Security Services, Inc., (2016) 5 Cal.5th 257,*
9 *269, the California Supreme Court held that the rest period requirement “obligates*
10 *employers to permit-and authorizes employees to take-off-duty rest periods. That is,*
11 *during rest periods employers must relieve employees of all duties and relinquish*
12 *control over how employees spend their time.” (citation omitted) As a practical*
13 *matter, however, if an employee is provided a ten minute rest period, the employee*
14 *can only travel five minutes from a work post before heading back to return in time.*

15 See California Department of Industrial Relations, Rest Periods/Lactation Accommodation, *available at*
16 www.dir.ca.gov/dlse/faq_restperiods.htm (November 2017) (Question 5). (Emphasis added.)

17 33. Prior to the *Augustus* in 2016, at least one California Court of Appeals as well as the
18 California Supreme Court had held that California employers exercise sufficient “control” over workers
19 such that they are “on-duty” and must be paid for their “hours worked” for all time during which the
20 employer merely requires them to remain on its premises, including time associated with on-premises
21 meal breaks and travel time on a company bus, even when they are not performing job duties. *Bono*
22 *Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968 (1995); *Morillion v. Royal Packing*, 22 Cal. 4th 575
23 (2000).

24 34. The California Supreme Court’s recent decision in *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038
25 (Cal. Feb. 13, 2020), by its logic also indicates that an on-premises rest break policy will not pass
26 muster. The Court in *Frlekin* reaffirmed its holding in *Morillion* that “[t]he level of the employer’s
27 control over its employees, rather than the mere fact that the employer requires the employees’ activity,
28 is determinative’ concerning whether an activity is compensable under the Wage Order’s ‘hours worked’

1 control clause. *Frlekin v. Apple Inc.*, 8 Cal. 5th at 1056, *quoting Morrillion*, 22 Cal. 4th at 587. By that
2 measure, the time spent by employees undergoing theft-prevention-related bag searches after the end of
3 their shifts was subject to the employer's control and counted as "hours worked" and compensable. *Id.*
4 at 1056-57. With unmistakable implications for the issue here, the Court, again embracing *Bono*, stated:

5 Thus, "[w]hen an employer directs, commands *or restrains an employee from leaving the*
6 *workplace* . . . and thus prevents the employee from using the time effectively for his or her own
7 purposes, that employee remains subject to the employer's control [and according to [the
applicable Wage Order], that employee must be paid."

8 *Frlekin*, 8 Cal.5th at 1057, *quoting Bono*, 32 Cal. App. 4th at 975.

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10 35. Here, DEFENDANTS promulgated a written policy, set forth in its written application
11 materials, that required that rest breaks must be taken on DEFENDANTS' premises. On information
12 and belief, DEFENDANTS' on-premises rest break policy was promulgated for all the employees and
13 joint employees working at DEFENDANTS' numerous California facilities in California. This on
14 premises rest break policy violates California law, as outlined above. *See also Roman Diaz v. Medline*
15 *Industries, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2019-5651 (Order Denying In
16 Part and Granting in Part Defendant's Motion for Judgment on the Pleadings, entered on December 5,
17 2019 where the Court held that an on-premises rest break policy is facially invalid under California law).

18 36. DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No. 8-
19 2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with a
20 compliant rest period, in accordance with the applicable IWC Wage Order, one (1) additional hour of
21 compensation at each employee's regular rate of pay for each workday that a compliant rest period was
22 not provided.

23 **Failure to Timely Pay Wages During Employment**
24 **(Labor Code § 204)**

25 37. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of
26 any calendar month, DEFENDANTS are required to pay its nonexempt employees between the 16th
27 and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that
28 for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are

1 required to pay its nonexempt employees between the 1st and 10th day of the following calendar month.

2 38. Labor Code Section 204 further provides that all wages earned for labor more than the
3 normal work period shall be paid no later than the payday of the next regular payroll period.

4 39. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
5 PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to timely pay PLAINTIFF and
6 other aggrieved employees all the wages for labor performed by the next regular payroll period as
7 required by Labor Code Section 204.

8 **Failure to Pay All Wages Due Upon Separation of Employment**

9 **(Labor Code §§ 201, 202, 203)**

10 40. Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all
11 earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if
12 an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge
13 are due and payable immediately.

14 41. Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages
15 due to an employee no later than 72 hours after the employee quits, unless the employee provided 72
16 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
17 wages at the time of quitting.

18 42. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance
19 with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the
20 employer is liable for waiting time penalties in the form of continued wages to the employee for up to
21 thirty (30) days.

22 43. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
23 PENALTY PERIOD and in violation of Labor Code Sections 201 and 202, DEFENDANTS willfully
24 failed to timely pay accrued wages and other compensation to PLAINTIFF and other aggrieved
25 employees who were discharged or who quit.

26 **Failure to Furnish Accurate Itemized Wage Statements**

27 **(Labor Code § 226(a); IWC Wage Order No. 4-2001, § 7)**

28 44. During the PAGA PENALTY PERIOD, DEFENDANTS failed and continue to fail to

1 provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements
2 in writing showing each employee's accurate gross wages earned, total hours worked, and net wages
3 earned for PLAINTIFF and other aggrieved employees in violation of Labor Code Section 226,
4 subdivision (a) and IWC Wage Order No. 8-2001, § 7.

5 45. As alleged above, PLAINTIFF is informed and believes, and based thereon alleges, that
6 during the PAGA PENALTY PERIOD, DEFENDANTS knowingly and intentionally failed to pay
7 PLAINTIFF and all aggrieved employees all minimum wages associated with off-the-clock COVID-19
8 temperature checks and rest period premiums. Accordingly, all wage statements contained inaccurate
9 information as to hours worked and wages earned (since time spent on pre-shift COVID temperature
10 checks and rest period premiums were never included).

11 46. As a result of DEFENDANTS' unlawful policies and practices and failure to pay all
12 earned wages, including minimum wages, DEFENDANTS knowingly and intentionally failed to
13 provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements
14 in accordance with Labor Code Section 226, subdivision (a).

15 47. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees
16 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage
17 statements as PLAINTIFF and other aggrieved employees could not timely and easily determine from
18 the wage statements the actual and accurate total hours worked by the employees, the gross wages
19 earned, the net wages earned, since time spent on COVID-19 temperature checks, was always done off
20 the clock and pre-shift.

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

23 **(Labor Code §§ 2698 et seq.)**

24 **(AGAINST DEFENDANT)**

25 48. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
26 the allegations in paragraphs 1 through 47, above.

27 49. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code Section
28 2699, subdivision (c), and a proper representative to bring a civil action on behalf of the LWDA and

1 other current and former non-exempt employees of DEFENDANTS under the procedures specified in
2 Labor Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more
3 of the alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY
4 PERIOD.

5 50. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
6 PAGA.

7 51. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover
8 civil penalties from DEFENDANTS in a representative action for the violations set forth above which
9 include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 210, 226,
10 subdivision (a), 226.7, 1194, 1194.2, 1197, 1197.1, 1198, and 1198.

11 52. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based
12 on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
13 provided which include, but are not limited to, the following:

- 14 a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the
15 amount of one hundred dollars (\$100.00) for the initial violation and two hundred
16 dollars (\$200.00) per employee for violations in subsequent pay periods for violations
17 of Labor Code Section 204;
- 18 b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in
19 the amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for
20 the initial pay period where a violation occurs and one thousand dollars (\$1,000.00)
21 per aggrieved employee for violations in subsequent pay periods for violations of
22 Labor Code Section 226, subdivision (a); and
- 23 c. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any
24 employee a wage less than the minimum fixed by an order of the commission, shall
25 be subject to a civil penalty as follows: for any initial violation that is intentionally
26 committed, one hundred dollars (\$100.00) for each underpaid employee for each pay
27 period for which the employee is underpaid; and for each subsequent violation of the
28 same offense, two hundred fifty dollars (\$250.00) for each underpaid employee for

1 each pay period for which the employee is underpaid regardless of whether or not the
2 initial violation was intentionally committed.

3 53. PLAINTIFF further seeks civil penalties based on DEFENDANTS' violations of Labor
4 Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699,
5 subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically
6 provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved
7 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved
8 employee per pay period for each subsequent violation.

9 54. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699,
10 subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty
11 is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 226.7,
12 1194, 1197, and 1198.

13 55. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law
14 including under Labor Code Section 2699, subdivision (g)(1).

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other aggrieved employees,
17 prays for relief against DEFENDANTS, as follows:

- 18 1. For civil penalties according to proof and all penalties authorized under the PAGA
19 including under Labor Code Sections 210, 226.3, 1194, 1197.1, and 2699, subdivisions
20 (a) and (f);
- 21 2. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
22 Code Section 2699, subdivision (g) and any other applicable provisions providing for
23 attorneys' fees and costs; and

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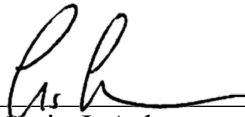
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1 3. For such further and additional relief as allowed by law or which the Court deems just
2 and proper.

3
4 DATED: January 24, 2022

Respectfully submitted,

5 **ACKERMANN & TILAJEF, P.C.**

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7 By: 
8 Craig J. Ackermann, Esq.
9 *Attorneys for Plaintiff DELANEY HUFF,*
 on behalf of the LWDA and all other
 aggrieved employees

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