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7 Attorneys for Plaintiff SERGIO HERNANDEZ
8 on behalf of himself, the State of California, and others similarly
9 situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

13 SERGIO HERNANDEZ, on behalf of
14 himself, the State of California, and others
similarly situated and aggrieved,

15 Plaintiff,

17 v.

18 THE KLINGBEIL COMPANY, an Ohio
Corporation; KLINGBEIL CAPITAL
19 MANAGEMENT, LTD., an Ohio Limited
Liability Company; and DOES 1-100,
20 inclusive,

21 Defendants.
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 21 2022

Leanne M. Landeros
LEANNE M. LANDEROS

Case No. **CIV SB 2208201**

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

1 Plaintiff, SERGIO HERNANDEZ (“PLAINTIFF”), an individual on behalf of himself, the
2 State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants THE KLINGBEIL COMPANY, an Ohio Corporation; KLINGBEIL
4 CAPITAL MANAGEMENT, LTD., AN OHIO LIMITED LIABILITY COMPANY, an Ohio
5 Limited Liability Company; and DOES 1-100, inclusive, (collectively referred to herein as
6 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

7 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

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

28 5. PLAINTIFF was employed by DEFENDANTS from in or around July 2021 through

1 in or around September 2021. PLAINTIFF worked at DEFENDANTS' Copper Wood Apartments
2 and Enclave in Town Square Apartments in Chino, California (in the county of San Bernardino) as
3 a non-exempt maintenance worker.

4 6. DEFENDANTS are each either an Ohio limited liability company or an Ohio
5 corporation that, at all relevant times, were authorized to do business within the State of California
6 and are doing business in the State of California. DEFENDANTS own, operate, or otherwise
7 manage companies that operate and/or manage residential rental properties throughout California.

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

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

24 **JOINT LIABILITY**

25 9. Under California law, the definition of the terms "to employ" are broadly construed
26 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
27 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
28 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49

1 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
2 was to reach situations in which multiple entities control different aspects of the employment
3 relationship. Supervision of the work, in the specific sense of exercising control over how services
4 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
5 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
6 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
7 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
8 California, applying a less stringent standard to what constitutes sufficient control by a business
9 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
10 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
11 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
12 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
13 employment,” *Id.* at 875 [emphasis added].

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

21 11. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
22 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
23 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
24 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
25 policies and practices regardless of the location(s) or facilities where they worked. Among other
26 things, PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial
27 control, in DEFENDANTS’ property management companies, (2) DEFENDANTS utilize common
28 management, who have control over the day-to-day operations and employment matters, including

1 the power to hire and fire, set schedules, issue employee policies, and determine rates of
2 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
3 procedures for all California employees, including issuing the same employee handbooks and other
4 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
5 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

6 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
7 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
8 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
9 DEFENDANTS, exercised sufficient control over PLAINTIFF and Aggrieved Employees' wages,
10 hours and working conditions, and/or suffered or permitted PLAINTIFF and Aggrieved Employees
11 to work so as to be considered the joint employers of PLAINTIFF and Aggrieved Employees.
12 Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
13 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
14 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
15 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
16 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
17 PLAINTIFF and Aggrieved Employees in a uniform manner. DEFENDANTS collectively
18 represented to PLAINTIFF and Aggrieved Employees that each was an "at-will" employee of
19 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
20 and Aggrieved Employees' employment with or without cause. Upon information and belief,
21 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
22 writing the details of their compensation, and the manner in which they were to take meal and rest
23 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
24 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
25 collectively would evaluate the wage rates of PLAINTIFF and Aggrieved Employees.

26 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
27 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
28 collectively held the right to control virtually every aspect of PLAINTIFF's and Aggrieved

1 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
2 PLAINTIFF seeks relief in this Complaint.

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

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

12 16. By reason of their status as joint employers of PLAINTIFF and Aggrieved
13 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
14 Code and applicable Wage Orders as to PLAINTIFF and other Aggrieved Employees.

15 **PAGA ALLEGATIONS**

16 17. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
17 of himself, the State of California and Aggrieved Employees, regarding violations of the California
18 Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

19 All current and former non-exempt employees that worked either
20 directly or via a staffing for DEFENDANTS at any of its locations in
21 California at any time from one year plus 65 days from filing of the
22 initial Complaint through the present ("PAGA Period").

23 18. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
24 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
25 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
26 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
27 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
28 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved

1 Employees, as he was jointly employed by DEFENDANTS and is thereby affected by one or more
2 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
3 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
4 the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761

5 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

6 19. On December 6, 2021, PLAINTIFF, through his counsel, gave written notice by
7 online filing with the California Labor and Workforce Development Agency (“LWDA”) informing
8 it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations
9 alleged in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and correct copy
10 of the PAGA Letter also sent to DEFENDANTS via certified mail.

11 20. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
12 Labor Code and the applicable wage orders on behalf of himself, the State of California and other
13 Aggrieved Employees.

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

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

22 **FACTUAL AND LEGAL ALLEGATIONS**

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

27 24. PLAINTIFF was employed by DEFENDANTS during the relevant period as a full-
28 time, non-exempt maintenance worker (or similar title) from in or around July 2021 through in or

1 around September 2021. PLAINTIFF was paid on an hourly basis and typically worked at least eight
2 (8) hours per day, at least five (5) days per week.

3 25. **Meal Period Violations.** PLAINTIFF and Aggrieved Employees consistently
4 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
5 However, PLAINTIFF and Aggrieved Employees were consistently unable to take timely, off duty,
6 thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted
7 meal periods and or work through part or all their meal periods due to the nature and constraints of
8 their job duties, lack of relief workers available, requirement to stay on premises, and or commentary
9 from management pressuring them to take meal periods past the fifth hour of work or to otherwise
10 take noncompliant meal periods or skip meal periods completely in order to complete maintenance
11 assignments and/or other work related duties. For example, PLAINTIFF's scheduled shift began at
12 8:00 am but he was frequently unable to take a meal break until at or after 3:00 pm due to the nature
13 and constraints of his job duties, lack of relief workers, and/or commentary from management.
14 PLAINTIFF was required to complete repairs including but not limited to repairing leaks, dish
15 washers, washers and dryers, and/or changing toilets or faucets. Due to PLAINTIFF's workload,
16 PLAINTIFF was frequently denied a timely meal period. Based on information and belief,
17 Aggrieved Employees were also unable to take a timely meal period.

18 26. Based on information and belief, DEFENDANTS were informed of PLAINTIFF's
19 and Aggrieved Employees' inability to take compliant meal periods due to their need to tend to their
20 assigned properties, other job duties, and/or lack of relief workers available because PLAINTIFF
21 and/or Aggrieved Employees so informed DEFENDANTS. Yet, DEFENDANTS failed to take any
22 action to remedy the situation in order to allow PLAINTIFF and Aggrieved Employees to take
23 compliant, uninterrupted meal periods. Moreover, DEFENDANTS failed to maintain accurate
24 records of PLAINTIFF's and Aggrieved Employees' meal periods. Instead, DEFENDANTS
25 regularly recorded PLAINTIFF's meal periods as if they were consistently taken at 12:00 pm, even
26 though a meal period was not actually afforded at this time and/or was otherwise not in accordance
27 with California law.

28 27. Despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS

1 implemented a policy and/or practice of automatically deducting at least 30 and/or requiring
2 PLAINTIFF and Aggrieved Employees to clock out at least thirty minutes (and sometimes 60
3 minutes) per shift for these missed/improper and/or otherwise unlawful meal periods, despite having
4 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
5 receive timely, compliant, uninterrupted meal periods, resulting in the underpayment of minimum
6 and overtime pay (as described below). As a result of the unlawful meal period practices,
7 DEFENDANTS also failed to maintain accurate records of the total hours worked by PLAINTIFF
8 and Aggrieved Employees.

9 28. As alleged above, DEFENDANTS also illegally rounded the start and end times of
10 employees' meal periods resulting in PLAINTIFF and Aggrieved Employees not being paid for all
11 time worked as well as late or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021)
12 11 Cal.5th 58. For example, DEFENDANTS time records for PLAINTIFF consistently show that a
13 purported meal period was taken between 12:00 pm and 1:00 pm even though an uninterrupted meal
14 period was not afforded during this time.

15 29. Moreover, PLAINTIFF and Aggrieved Employees did not receive a second
16 compliant thirty-minute meal period before the end of the tenth hour of work when working more
17 than ten hours in a workday.

18 30. DEFENDANTS also implemented policies and/or practices that failed to relieve
19 PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control during
20 unpaid meal periods. For example, PLAINTIFF was interrupted during his purported meal periods
21 in order to complete work tasks, including but not limited to completing maintenance jobs around
22 the facilities. At other times, PLAINTIFF received work related calls and/or messages during
23 purported meal periods.

24 31. Based on information and belief, DEFENDANTS did not have a written meal break
25 policy, nor did DEFENDANTS have any sort of compliant policy in practice.

26 32. Based on information and belief, DEFENDANTS had actual or constructive
27 knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of
28 meal periods owed to PLAINTIFF and Aggrieved Employees in violation of California's meal

1 period laws.

2 33. Moreover, DEFENDANTS never paid PLAINTIFF and Aggrieved Employees an
3 additional hour of wages at their respective regular rates of pay for each workday a proper meal
4 period was not provided. *Brinker, supra*, 53 Cal.4th 1004. DEFENDANTS either failed to pay a
5 meal period premium at all for each workday a proper meal period was not provided or failed to pay
6 the proper meal period premium for failure to incorporate all non-discretionary remuneration,
7 including but not limited to, non-discretionary bonus pay and/or shift differential pay into the regular
8 rate of compensation for purposes of calculating the owed meal period premium.

9 34. **Rest Periods Violations.** DEFENDANTS did not properly authorize or permit
10 PLAINTIFF and Aggrieved Employees to take compliant rest periods at a rate of every four (4)
11 hours worked or major fraction thereof.

12 35. PLAINTIFF and Aggrieved Employees were not adequately informed, authorized,
13 instructed about, nor permitted an opportunity to take lawful rest periods per California law.

14 36. Based on information and belief, DEFENDANTS had no policy in place nor
15 instruction as to the taking, timing, or duty-free nature of rest periods. Any purported rest periods
16 were interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and
17 constraints of PLAINTIFF's and other Aggrieved Employees' job duties and/or commentary from
18 supervisors pressuring them to skip rest periods completely or take non-compliant rest periods. For
19 example, PLAINTIFF was required to be on call in order to tend to the needs of the apartment units
20 assigned and/or compete other job duties, such that rest breaks were only taken once jobs were
21 completed/if time permitted. PLAINTIFF received work related calls and messages throughout the
22 day, including but not limited to during purported rest periods. As such, PLAINTIFF was not
23 afforded an opportunity to take lawful rest periods. Based on information and belief,
24 DEFENDANTS failed to provide Aggrieved Employees with lawful rest periods.

25 37. Based on information and belief, DEFENDANTS never paid PLAINTIFF and
26 Aggrieved Employees an additional hour of wages at their regular rate(s) of pay for each workday
27 they were denied a compliant rest period. DEFENDANTS either failed to pay a rest period premium
28 at all for each workday a proper rest period was not provided or failed to pay the proper rest period

1 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
2 non-discretionary bonus pay and/or shift differential pay into the regular rate of compensation for
3 purposes of calculating the owed rest period premium.

4 38. By failing to provide rest periods for every four (4) hours worked or major fraction
5 thereof, and by failing to provide compensation for these missed or unlawful rest periods,
6 DEFENDANTS willfully violated the provisions of Labor Code section 226.7.

7 39. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
8 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
9 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
10 Employees for all hours worked by virtue of, including but not limited to, DEFENDANTS' time-
11 rounding policies and practices, DEFENDANTS' automatic deduction policies and practices for
12 meal periods, policies and practices that failed to relieve Aggrieved Employees of all
13 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
14 improper meal periods (as described above), and payment according to scheduled hours worked and
15 not actual time worked/other off-the-clock work policies and practices.

16 40. Based on information and belief, DEFENDANTS implemented a policy and practice
17 of automatically deducting at least thirty minutes per shift (and up to 60 minutes per shift) for meal
18 periods and/or requiring PLAINTIFF and Aggrieved Employees to clock out for at least thirty
19 minutes per shift for meal periods, despite having actual and/or constructive knowledge that they
20 were working through part of all of these meal periods, thereby depriving PLAINTIFF and
21 Aggrieved Employees of all earned minimum and overtime wages.

22 41. Based on further information and belief, DEFENDANTS rounded the start and end
23 times of employee meal periods and shift start and end times resulting in PLAINTIFF and Aggrieved
24 Employees not being paid for all time worked. For example, DEFENDANTS' time records for
25 PLAINTIFF consistently show a clock in time of precisely 8:00 am as the shift start time and a shift
26 end time of precisely 5:00 pm. The same time records also consistently purport a meal period start
27 time of 12:00 pm and a meal period end time of 1:00 pm. Moreover, PLAINTIFF's wage statements
28 consistently show that the reported total hours worked are rounded to the nearest hour. Based on

1 information and belief, DEFENDANTS had a policy and/or practice of rounding the meal period
2 start and end times and shift start and end times in a way that favored DEFENDANTS more often
3 than not, resulting in significant uncompensated time worked by PLAINTIFF and Aggrieved
4 Employees.

5 42. DEFENDANTS implemented a policy and practice of paying PLAINTIFF and
6 Aggrieved Employees for scheduled work hours only and not the hours actually worked by
7 PLAINTIFF and other Aggrieved Employees, despite having actual and/or constructive knowledge
8 that PLAINTIFF and other Aggrieved Employees worked before/after and beyond scheduled hours.
9 For example, at times PLAINTIFF was required to return to work after completing his scheduled
10 shift in order complete work tasks, including but not limited to fixing a leak and or completing
11 repairs. Based on information and belief, this work time was off-the-clock and was unpaid.
12 Moreover, PLAINTIFF frequently worked beyond his scheduled shift end time of 5:00 pm (due to
13 his assigned work duties/workload and need to complete repairs) but was only paid for the scheduled
14 work time as opposed to all hours actually worked. Based on information and belief,
15 DEFENDANTS required and/or suffered or permitted PLAINTIFF and Aggrieved Employees to
16 perform work prior to clocking in and/or after clocking out of their shifts or otherwise outside of
17 their scheduled shift, resulting in the underpayment of minimum and overtime wages.

18 43. Based on information and belief, DEFENDANTS had actual or constructive
19 knowledge that its time-rounding and auto-deduction policies and practices and failure to provide
20 off-duty meal periods, payment according to scheduled hours rather than actual hours worked/other
21 off-the-clock work policies and practices described above, resulted in the underpayment of
22 minimum wages and overtime wages owed PLAINTIFF and Aggrieved Employees.

23 44. Based on further information and belief, DEFENDANTS failed to pay proper
24 overtime rates to Aggrieved Employees due to DEFENDANTS' failure to incorporate all forms of
25 non-discretionary compensation, including but not limited to, shift differential pay and/or non-
26 discretionary bonus pay, into the regular rate of pay for purposes of calculating the owed overtime
27 rate, resulting in the underpayment of overtime wages owed. For example, during the pay period of
28 August 7, 2021, through August 20, 2021, PLAINTIFF worked overtime and earned a bonus, but

1 said bonus was not factored into PLAINTIFF's regular rate of pay for purposes of correctly
2 calculating the owed overtime rate. Failing to include non-discretionary compensation in the regular
3 rate of pay resulted in a miscalculation of the overtime wage rate and the underpayment of overtime
4 wages owed to PLAINTIFF and Aggrieved Employees.

5 45. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
6 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
7 required by Labor Code section 1174, 1198, 1199, and the applicable Wage Order, section 7.
8 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
9 required by law, including but not limited to the following records: total daily hours worked,
10 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
11 began and ended each work period, time records of meal periods, and accurate itemized wage
12 statements.

13 46. DEFENDANTS have failed and continue to fail to keep accurate and complete
14 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
15 break deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
16 employer control during unpaid meal periods, failure to record the true start and end times of meal
17 periods, shift start times and shift end times, and other off-the-clock work policies and practices
18 described herein.

19 47. **Standard Conditions of Labor violations.** DEFENDANTS' unlawful policies and
20 practices described herein also resulted in violations of Labor Code Sections 1198 and 1199, which
21 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage
22 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,
23 and 1198, or order or ruling of the commission.

24 48. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
25 record keeping provisions, minimum and overtime wages result in separate violations of sections
26 1198 and 1199.

27 49. **Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
28 Code section 216 by failing to pay PLAINTIFF and Aggrieved Employees for all hours worked at

1 the proper wage rate and by failing to pay PLAINTIFF and Aggrieved Employees an additional
2 hour of pay for each meal/rest period not provided or that was otherwise unlawful. *Gould v.*
3 *Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

4 **50. Statutory Wage Violations.** As described above, DEFENDANTS willfully and
5 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
6 for all hours worked which resulted in the payment of less than the statutorily required wages owed
7 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
8 not limited to, overtime wages and minimum wages, to which they were entitled to under California
9 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
10 Aggrieved Employees lower wages than those they were entitled to while purporting that
11 PLAINTIFF and other Aggrieved Employees were properly paid.

12 **51. Unreimbursed Business Expenses.** DEFENDANTS required PLAINTIFF and
13 Aggrieved Employees to incur business expenses as a direct consequence of the performance of
14 their job duties without providing reimbursement, in violation of Labor Code section 2802. Based
15 on information and belief, PLAINTIFF and Aggrieved Employees were improperly required to
16 provide and maintain work tools that are supposed to be the responsibility of the employer.

17 **52.** Based on information and belief, DEFENDANTS shifted the costs of doing business
18 onto PLAINTIFF and Aggrieved Employees by requiring them to pay for business expenses,
19 including but not limited to use of personal tools, purchase and/or maintenance of uniforms/work
20 clothing, personal cell phone, and/or personal vehicle. For example, PLAINTIFF was required to
21 use his personal hand tools and/or power tools to complete repairs. PLAINTIFF was required to use
22 his personal cell phone to receive work related calls and messages. PLAINTIFF also used his
23 personal phone to take pictures of completed jobs/repairs and send them to his manager.
24 PLAINTIFF was also required to use his personal vehicle when driving between apartment
25 complexes operated by DEFENDANTS. PLAINTIFF was also required to use his personal vehicle
26 to drive to the hardware store and pick up parts to complete repairs or upgrades. PLAINTIFF was
27 also required to maintain uniforms/shirts that contained DEFENDANTS' logo on them. Based on
28 information and belief, DEFENDANTS also required Aggrieved Employees to pay for business

1 expenses, including but not limited to, use of their personal cell phone, personal tools, personal
2 vehicle, and/or purchase/maintenance of work uniforms.

3 53. DEFENDANTS did not offer or provide any reimbursement for these business-
4 related expenses. DEFENDANTS' failure to provide Aggrieved Employees with full
5 reimbursement for all reasonable expenses associated with carrying out their duties required that
6 Aggrieved Employees subsidize and/or carry the burden of business expenses in violation of Labor
7 Code section 2802.

8 54. **Inaccurate Wage Statements.** DEFENDANTS failed to provide PLAINTIFF and
9 Aggrieved Employees with accurate wage statements that complied with Labor Code section 226.
10 DEFENDANTS issued wage statements that failed to among other things, indicate the correct name
11 and address of the legal entity that is the employer. Moreover, DEFENDANTS issued wage
12 statements that failed to indicate the gross and net wages earned during the pay period, the correct
13 applicable rates of pay for all hours worked, and the "total hours worked" (by virtue of the automatic
14 deduction for meal periods and time-rounding policies and practices and other off-the-clock work
15 policies and practices, all described in greater detail *supra*). Failure to list all hours worked on a
16 wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v*
17 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

18 55. In addition, because of the violations detailed above, including but not limited to, not
19 paying regular and overtime wages for all hours worked and failing to provide meal and rest break
20 premiums, DEFENDANTS violated California Labor Code section 226 by willfully failing to
21 furnish PLAINTIFF and Aggrieved Employees with accurate, itemized wage statements.
22 Accordingly, DEFENDANTS violated Labor Code section 226.

23 56. **Sick Leave.** Throughout the relevant time period, DEFENDANTS either failed to
24 provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate
25 of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the accrued sick
26 leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction
27 policies and practices for meal periods and shift start and end times, or other required off-the-clock
28 work described herein) and by failing to incorporate multiple rates of pay and/or all non-

1 discretionary remuneration, including but not limited to, non-discretionary bonuses, shift
2 differential pay, and/or other non-discretionary compensation into the sick leave pay rate
3 calculation.

4 57. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
5 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
6 entitlement to sick leave in a Labor Code section 2810.5 notice. Additionally, DEFENDANTS failed
7 to provide notice of the correct sick leave amount balance available to PLAINTIFF and other
8 Aggrieved Employees on their wage statements or other written statement. Moreover, based on
9 information and belief, DEFENDANTS failed to maintain accurate records of used sick leave and
10 the balance of paid sick leave.

11 58. Throughout the relevant time period, DEFENDANTS failed to provide notice of the
12 balance of sick leave pay left for PLAINTIFF and Aggrieved Employees, thus affecting their
13 intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and Aggrieved
14 Employees would have used their paid sick leave at least prior to their respective separations, for as
15 on several occasions thereafter, he or she would have been entitled to use the banked sick leave and
16 earn appropriate compensation.

17 59. DEFENDANTS further failed and continue to fail to comply with Labor Code
18 section 246, by failing to provide PLAINTIFF and Aggrieved Employees with a Labor Code section
19 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid
20 time off leave an employer provides in lieu of sick leave, at the time it pays wages.

21 60. As such, DEFENDANTS have violated California's paid sick leave laws and
22 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
23 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
24 unlawful practices and policies violate Labor Code sections 245-248.5.

25 61. **Failure to Timely Pay All Wages Upon Separation of Employment.** Upon
26 separation of employment, DEFENDANTS failed to timely furnish PLAINTIFF and Aggrieved
27 Employees their final paychecks containing all earned and unpaid wages, including but not limited
28 to, all earned and unpaid minimum wages, all earned and unpaid overtime wages, all owed premium

1 wages, all accrued sick leave, vacation pay, and/or all accrued paid time off at the properly accrued
2 rates.

3 62. These violations subject DEFENDANTS to civil penalties under Labor Code section
4 203, 210, and/or 256.

5 63. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** Unlawful
6 Agreements. Based on information and belief, DEEFENDANTS required PLAINTIFF and
7 required/continue to require Aggrieved Employees to agree in writing to submit to unlawful criminal
8 and/or financial checks as a condition of obtaining and/or continuing employment in violation of
9 Labor Code section 432.5.

10 64. Based on information and belief, DEFENDANTS ordered unlawful financial credit
11 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
12 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
13 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

14 65. Based on information and belief, DEFENDANTS required PLAINTIFF and
15 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
16 checks which failed to abide by the requirements set forth in Cal. Civ. Code section 1786 *et. Seq.*,
17 and 15 U.S.C. section 1681, *et. seq.*, as a condition of obtaining and/or holding employment.

18 66. Based on further information and belief, DEFENDANTS also required Aggrieved
19 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
20 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
21 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
22 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

26 68. By requiring that PLAINTFF and other Aggrieved Employees sign off on the illegal
27 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

28 69. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an

1 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
2 then, certain limitations apply. Based on information and belief, DEFENDANTS asked PLAINTIFF
3 and other Aggrieved Employees about arrests not resulting in convictions on its employment
4 application, in violation of California law.

5 70. Upon information and belief, DEFENDANTS, in violation of California law,
6 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
7 (“FEHA”), asked PLAINTIFF and other Aggrieved Employees about convictions prior to extending
8 an offer of employment and/or otherwise impermissibly inquired into criminal history on its
9 employment application in violation of California law.

10 71. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
11 Code section 432.7. By asking about convictions at the application phase or prior to extending an
12 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
13 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
14 disclose arrests and/or convictions as a condition of employment.

15 72. As such, Aggrieved Employees continue to be subject to various unlawful provisions
16 as a condition of employment.

17 73. Each violation of each Labor Code section and Wage Order provision results in a
18 separate civil penalty for PLAINTIFF and each Aggrieved Employee.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**

21 **2698, *ET SEQ.***

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

24 74. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

25 **Failure to Keep Accurate Records**

26 75. California Labor Code § 1174 requires employers to keep “accurate and complete”
27 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
28 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the

1 times during which all owed meal periods were provided each day.

2 76. Due to DEFENDANTS' automatic meal break deductions, failure to relieve
3 employees of all duties and employer control during meal periods, time rounding, and other off-the-
4 clock work policies and practices described above, DEFENDANTS failed, and continue to fail, to
5 keep accurate and complete records as required by law, including but not limited to the following
6 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF
7 and other Aggrieved Employees began and ended each work period, time records of meal periods,
8 shift start times and end times, and accurate itemized wage statements.

9 77. DEFENDANTS' failure to keep "accurate and complete" payroll records for
10 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
11 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
12 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
13 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
14 period during which the referenced statutes and Wage Order provisions were violated.¹

15 **Meal Period Violations**

16 78. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
17 DEFENDANTS were required to provide PLAINTIFF and the Aggrieved Employees with one 30-
18 minute meal break free from all duties and employer control for all shifts longer than 5 hours, and
19 a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods
20 can be waived, but only under the following circumstances: (1) if an employee's total work period
21 in a day is over five (5) hours but no more than six (6) hours, the required meal period may be
22 waived by mutual consent of the employer and employee, and (2) if an employee's total work period
23 in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period
24 may be waived by mutual consent of the employer and employee, but only if the first meal period

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "in addition to any other civil
28 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") (emphasis added).

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

8 79. Employers must pay employees an additional hour of wages at the employees’
9 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
10 meal period, first meal period provided after five (5) hours, second meal period provided after 10
11 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
12 provide an employee a meal period in accordance with the applicable provision of this Order, the
13 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
14 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

15 80. PLAINTIFF and Aggrieved Employees were consistently unable to take timely, off
16 duty, thirty-minute, uninterrupted first and second meal periods, often being forced to take late meal
17 periods, interrupted meal periods and/or work through part or all of their meal periods due to the
18 nature and constraints of their job duties, lack of relief workers, and/or commentary from
19 DEFENDANTS pressuring them to take non-compliant meal periods or skip meal periods
20 completely.

21 81. Based on information and belief, DEFENDANTS had and continue to have a
22 continuous policy of rounding the start and end times of employees’ meal periods and/or
23 automatically deducting thirty minutes (or more) per shift despite having actual and/or constructive
24 knowledge that PLAINTIFF and Aggrieved Employees did not receive compliant meal periods.

25 82. Moreover, Aggrieved Employees did not receive a timely, uninterrupted second meal
26 period when working shifts over ten (10) hours in a workday.

27 83. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
28 periods in violation of California law or failed to pay the proper meal period premium for failure to

1 incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
2 differential pay and/or other non-discretionary compensation into the regular rate or compensation
3 for purposes of calculating the owed meal period premium.

4 84. DEFENDANTS failed to provide PLAINTIFF and the Aggrieved Employees with
5 all required meal periods, or with proper compensation in lieu thereof. PLAINTIFF is informed and
6 believes and thereon alleges that DEFENDANTS had actual or constructive knowledge that its time-
7 rounding and auto-deduction policies and practices and policies, and practices that failed to relieve
8 PLAINTIFF and other Aggrieved Employees of all duties and employer control during meal periods
9 resulted in the denial of compliant meal periods in violation of California's meal period laws.

10 85. These unlawful meal period policies and practices result in violations of Labor Code
11 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
12 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
13 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
14 1174 as discussed above, 1199, 226.6 and other violations discussed below.

15 **Rest Period Violations**

16 86. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
17 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
18 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
19 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
20 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
21 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
22 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
23 The rest period requirement obligates employers to permit and authorize employees to take off-duty
24 rest periods, meaning employers must relieve employees of all duties and relinquish control over
25 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. If
26 the employer fails to provide any required rest period, the employer must pay the employee one
27 hour of pay at the employee’s regular rate of compensation for each workday the employer did not
28 provide at least one legally required rest period, pursuant to Labor Code section 226.7 and applicable

1 IWC Wage Order, §12(B).

2 87. As explained above, PLAINTIFF and the Aggrieved Employees did not receive
3 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.
4 Any purported rest periods were interrupted, cut short, on duty, restricted to premises, and/or late.
5 PLAINTIFF and the Aggrieved Employees were pressured to complete their work such that rest
6 breaks were only taken once tasks were completed/as time permitted.

7 88. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
8 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
9 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
10 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
11 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
12 the regular rate of compensation for purposes of determining the owed rest period premium.

13 89. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
14 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
15 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

16 **Minimum and Overtime Wage Violations**

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

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

1 consecutive day of work in a work week. *Ibid.*

2 92. As alleged above, DEFENDANTS violated California's minimum and overtime
3 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
4 by virtue of, among other things, DEFENDANTS' auto-deduction policy and practice for meal
5 periods, paying for scheduled hours instead of actual hours worked, off the-clock work, and rounded
6 time entries.

7 93. DEFENDANTS had and continue to have a continuous policy of failing to pay
8 PLAINTIFF and Aggrieved Employees for all hours worked.

9 94. Based on information and belief, DEFENDANTS had and continue to have a
10 continuous policy of rounding PLAINTIFF's and Aggrieved Employees' time punches, including
11 the start and end of shift times, and meal period time punches. On information and belief, this policy
12 favored DEFENDANTS more often than not, resulting in significant uncompensated time worked
13 by PLAINTIFF and Aggrieved Employees.

14 95. Based on information and belief, DEFENDANTS had and continue to have a
15 continuous policy of paying PLAINTIFF and Aggrieved Employees for scheduled hours, rather than
16 actual hours worked.

17 96. Based on information and belief, DEFENDANTS had and continue to have a
18 continuous policy of requiring PLAINTIFF and the Aggrieved Employees to perform work prior to
19 clocking in for their shifts and/or after clocking out for their shifts and/or outside of their scheduled
20 shift times and during uncompensated meal periods.

21 97. Based on information and belief, DEFENDANTS had actual or constructive
22 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
23 meal periods, failing to relieve employees of all duties and employer control during unpaid meal
24 periods, policy and practice of payment according to scheduled time rather than actual work time
25 resulted in the underpayment of minimum and overtime wages owed to PLAINTIFF and other
26 Aggrieved Employees.

27 98. DEFENDANTS further violated California's overtime wage laws by failing to
28 incorporate all non-discretionary compensation, including but not limited to, non-discretionary

1 bonus compensation, shift differentials, and/or other non-discretionary compensation into the
2 regular rate of pay used to calculate the overtime rate of pay. Failing to include non-discretionary
3 compensation in the regular rate of pay resulted in a miscalculation of the overtime wage rate,
4 resulting in the underpayment of overtime wages owed to PLAINTIFF and the Aggrieved
5 Employees.

6 99. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
7 and unpaid overtime wages owed to PLAINTIFF and those Aggrieved Employees that worked more
8 than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid double time
9 wages.

10 100. These violations subject DEFENDANTS to civil penalties under Labor Code
11 sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC Wage Orders, section 20.

12 **Statutory Wage Violations**

13 101. California Labor Code section 223 makes it unlawful for an employer to secretly pay
14 wages lower than required by statute while purporting to pay legal wages. As described above,
15 DEFENDANTS willfully and systematically denied PLAINTIFF and other Aggrieved Employees
16 of all earned minimum and overtime compensation for all hours worked which resulted in the
17 payment of less than statutorily required wages. DEFENDANTS acted with the intent to deprive
18 them of statutory wages, including, but not limited to, overtime wages and minimum wages, to
19 which they were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other
20 Aggrieved Employees lower wages than those they were entitled to while purporting that
21 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other
22 Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon,
23 pursuant to Labor Code § 2699(f)-(g).

24 **Refusal to Make Payment**

25 102. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
26 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
27 and continue to violate this section by failing to pay PLAINTIFF and other Aggrieved Employees
28 for all hours worked at the proper wage rate and by failing to pay an additional hour of pay for each

1 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
2 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
3 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
4 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

5 **Business Expense Violations**

6 103. California law requires employers to indemnify their employees for all necessary
7 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
8 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
9 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
10 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
11 incurred by the employee enforcing the rights granted by this section.”

12 104. Among other things, under California law, when employees must use their personal
13 cellphones for work-related purposes, the employer must reimburse them for a reasonable
14 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
15 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
16 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
17 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
18 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
19 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

20 105. As explained above, PLAINTIFF and Aggrieved Employees were improperly
21 required to pay for business expenses that are legally the responsibility of the employer, including
22 but not limited to, cell phone/data plan usage and charges, costs of using a personal vehicle, costs
23 of using personal tools, and costs associated with the purchase and/or maintenance of uniforms.

24 106. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
25 full reimbursement for all reasonable expenses associated with carrying out their duties required

26 _____
27 ² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 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).

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

3 107. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
4 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
5 DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

6 108. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
7 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
8 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
9 Code § 2802 and the applicable Wage Order.

10 **Wage Statement Violations**

11 109. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the
12 Aggrieved Employees were entitled to receive, semimonthly or at the time of each payment of
13 wages, an itemized wage statement accurately stating the following:

14 (1) gross wages earned, (2) total hours worked by the employee,
15 except for any employee whose compensation is solely based on a
16 salary and who is exempt from payment of overtime under
17 subdivision (a) of Section 515 or any applicable order of the Industrial
18 Welfare Commission, (3) the number of piece-rate units earned and
19 any applicable piece rate if the employee is paid on a piece-rate basis,
20 (4) all deductions, provided that all deductions made on written orders
21 of the employee may be aggregated and shown as one item, (5) net
22 wages earned, (6) the inclusive dates of the period for which the
23 employee is paid, (7) the name of the employee and his or her social
24 security number, except that by January 1, 2008, only the last four
25 digits of his or her social security number or an employee
26 identification number other than a social security number may be
27 shown on the itemized statement, (8) the name and address of the
28 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.

110. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
with meal and rest periods that complied with Labor Code section 226.7, the wage statements
DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages

1 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
2 during the pay period and the corresponding number of hours worked at each hourly rate by the
3 employee, in violation of Labor Code section 226(a)(9).

4 111. Moreover, due to violations detailed above, including but not limited to,
5 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, and failure to
6 provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226
7 by willfully failing to furnish PLAINTIFF and other Aggrieved Employees with accurate, itemized
8 wage statements that listed the earned gross and net wages earned and the correct applicable rates
9 of pay for all hours worked. Moreover, wage statements issued by DEFENDANTS failed to list the
10 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of the automatic
11 deduction for meal periods, failure to relieve Aggrieved Employees of all duties and employer
12 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
13 hours worked, and off-the-clock work policies and practices, all described in greater detail *supra*),
14 which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage
15 statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon*
16 *Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

17 112. DEFENDANTS' failure to accurately list all hours worked on all wage statements
18 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
19 Employees over whether they received all wages owed to them.

20 113. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
21 they could not easily determine whether they received all wages owed to them and whether they
22 were paid for all hours worked.

23 114. Separately, and independent of the above allegations, based on information and
24 belief, DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved Employees that
25 further violate Labor Code section 226(a), by failing to list the correct name and/or address of the
26 legal entity that is the employer.

27 115. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and the
28 Aggrieved Employees with accurate, itemized wage statements.

1 116. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
2 Employees have suffered injury. The absence of accurate information on their wage statements has
3 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
4 mathematical computations to determine the amount of wages owed, and will cause difficulty and
5 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
6 submission of inaccurate information about wages and amounts deducted from wages to state and
7 federal government agencies. As a result, PLAINTIFF and the Aggrieved Employees are required
8 to participate in this lawsuit and create more difficulty and expense for PLAINTIFF and the
9 Aggrieved Employees from having to reconstruct time and pay records than if DEFENDANT had
10 complied with its legal obligations.

11 117. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
12 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
13 during which the statute provisions were violated. ³

14 **Standard Conditions of Labor Violations**

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

22 **Sick Leave Violations**

23 119. DEFENDANTS violated California's paid sick leave laws including, Labor Code
24 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
25 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
26 DEFENDANTS' failure to account for actual hours worked (by virtue of DEFENDANTS' meal
27 period auto-deduction, and time rounding practices, and other off-the-clock work described herein),

28 ³ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 and/or failure to incorporate all forms of non-discretionary remuneration into the sick pay
2 calculation and/or failure to provide paid sick leave at all.

3 120. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
4 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
5 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
6 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
7 Aggrieved Employees’ intelligent exercise of their paid sick leave.

8 121. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
9 their paid sick leave at least prior to their respective separations, for as on several occasions
10 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
11 compensation.

12 122. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
13 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
14 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
15 were entitled to the maximum number of hours accruable.

16 123. Upon information and belief, DEFENDANTS failed and continue to fail to comply
17 with Labor Code section 246, by failing to provide PLAINTIFF and Aggrieved Employees with a
18 Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
19 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
20 wages.

21 124. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

22 125. On information and belief, PLAINTIFF alleges that all of these practices were
23 experienced and continue to be experienced by other Aggrieved Employees.

24 126. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, including but
25 not limited to injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

26 **Untimely Payment of Final Wages**

27 127. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
28 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and

1 payable immediately.”

2 128. California Labor Code section 202(a) provides, in relevant part, that “[i]f an
3 employee not having a written contract for a definite period quits his or her employment, his or her
4 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
5 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
6 to his or her wages at the time of quitting.”

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

13 130. Based in information and belief, DEFENDANTS fail to timely pay final wages to
14 Aggrieved Employees upon separation of employment in violation of Labor Code section 201-202.
15 Moreover, final paychecks once provided to Aggrieved Employees do not include all wages owed
16 as they are devoid of, including but not limited to, all owed minimum wages, overtime wages,
17 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
18 accrued rates.

19 131. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
20 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
21 256.

22 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

23 132. Unlawful Agreements. Labor Code section 432.5 provides that “no employer...shall
24 require any employee or applicant for employment to agree, in writing, to any term or condition
25 which is known by such employer...to be prohibited by law.” Based on information and belief,
26 DEEFENDANTS required PLAINTIFF and required/continue to require Aggrieved Employees to
27 agree in writing to submit to unlawful criminal and/or financial checks as a condition of obtaining
28 and/or continuing employment.

1 133. The California Labor Code places certain procedural and substantive limits on an
2 employers' ability to conduct employee background checks and on how employers can use the
3 information they obtain through those background checks. Labor Code section 1024.5 states that
4 employers, except for financial institutions, may order a credit check only if the individual works
5 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
6 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
7 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
8 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
9 background check, including but not limited to identifying an appropriate reason for the background
10 check, a separate consent form with required disclosures and certain formatting requirements,
11 additional forms such as a summary of rights, a way by which to request a copy of the report, as
12 well as proper notice of adverse actions taken, among other statutory requirements.

13 134. Based on information and belief, DEFENDANTS ordered unlawful financial credit
14 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
15 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
16 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

17 135. Based on information and belief, DEFENDANTS required PLAINTIFF and
18 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
19 checks which failed to abide by the requirements set forth in Cal. Civ. Code section 1786 *et. Seq.*,
20 and 15 U.S.C. section 1681, *et. seq.*, as a condition of obtaining and/or holding employment.

21 136. Based on further information and belief, DEFENDANTS also required Aggrieved
22 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
23 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
24 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
25 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

1 138. By requiring that PLAINTIFF and other Aggrieved Employees sign off on the illegal
2 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

3 139. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
4 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
5 then, certain limitations apply. Based on information and belief, DEFENDANTS asked PLAINTIFF
6 and other Aggrieved Employees about arrests not resulting in convictions on its employment
7 application, in violation of California law.

8 140. Upon information and belief, DEFENDANTS, in violation of California law,
9 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
10 (“FEHA”), asked PLAINTIFF and other Aggrieved Employees about convictions prior to extending
11 an offer of employment and/or otherwise impermissibly inquired into criminal history on its
12 employment application in violation of California law.

13 141. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
14 Code section 432.7. By asking about convictions at the application phase or prior to extending an
15 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
16 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
17 disclose arrests and/or convictions as a condition of employment.

18 142. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to
19 various unlawful provisions as a condition of employment.

20 143. Under the provisions of PAGA and the above mentioned Labor Code sections,
21 including but not limited to Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 233, 234,
22 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802,
23 2810.5, and all relevant sections of the applicable Wage Orders, as well as all interpretations of
24 these laws by California Courts and administrative bodies, as well as any other law that is
25 enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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

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

9 **PRAYER FOR RELIEF**

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

- 12 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
13 25% payable to Aggrieved Employees);
- 14 2. For reasonable attorney's fees and costs of suit; and
- 15 3. For such other and further relief that the Court deems just and proper.
- 16

17 Dated: April 20, 2022

CROSNER LEGAL, PC

18

19 By: 
20 Michael R. Crosner, Esq.
21 Zachary M. Crosner, Esq.
22 Blake R. Jones, Esq.
23 Attorneys for Plaintiff,
24 SERGIO HERNANDEZ
25
26
27
28

EXHIBIT

1



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December 6, 2021

VIA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Klingbeil Capital Management, Inc.
Attn: Anne K. Ryan,
Agent for Service of Process
200 California Street, No. 300
San Francisco, CA 94111

Klingbeil Capital Management, Inc.
Attn: Human Resources
205 County Road H
Elkhorn, WI 53121

Klingbeil Capital Management, Inc.
Attn: Human Resources
500 W. Wilson Bridge Road, No. 140
Worthington, OH 43085

Klingbeil Capital Management
Attn: Human Resources
10530 Linden Lake Plaza, Suite 300
Manassas, VA 20109

The Klingbeil Company
Attn: Anne K. Ryan,
Agent for Service of Process
200 California Street, No. 300
San Francisco, CA 94111

Klingbeil Capital Management, LTD, an
Ohio Limited Liability Company
Attn: Anne K. Ryan
Agent for Service of Process
200 California Street, No. 300
San Francisco, CA 94111

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
Klingbeil Capital Management, Inc., Klingbeil Capital Management, The
Klingbeil Company, Klingbeil Capital Management, LTD
Date: December 6, 2021
Subject: *Sergio Hernandez v. Klingbeil Capital Management, Inc., Klingbeil Capital
Management, The Klingbeil Company, and Klingbeil Capital Management, LTD
/ LWDA-CM-856055-21*

Introduction

This office represents COMPLAINANT, Sergio Hernandez (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entity: Klingbeil Capital Management Inc., Klingbeil Capital Management, The Klingbeil Company, and Klingbeil Capital Management, LTD (hereinafter referred collectively as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former 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 certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State, the entity and/or mailing address as provided to the California Secretary of State, and/or the address listed on COMPLAINANT’s wage statements.

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. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), 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. For all other violations that are not curable, an action pursuant to 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

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

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

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

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

COMPLAINANT is informed and believes and hereon asserts that 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 Section 558.1

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

Klingbeil Capital Management, Inc., Klingbeil Capital Management, The Klingbeil Company, and Klingbeil Capital Management, LTD, and their managing agents own, operate, or otherwise manage companies that operate residential rental properties throughout California. At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER, at EMPLOYER's Copper Wood Apartments and Enclave in Town Square Apartments in Chino, California, as a maintenance worker from in or about July 2021 until COMPLAINANT's last day worked in or about September 2021. COMPLAINANT and similarly AGGRIEVED EMPLOYEES typically worked at least eight (8) hours per day, five (5) days per week. COMPLAINANT and similarly AGGRIEVED EMPLOYEES worked as maintenance workers. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were paid on an hourly basis. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were hourly paid, non-exempt employees.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay employees at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to provide COMPLAINANT and similarly AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and similarly AGGRIEVED EMPLOYEES an additional hour of premium pay at the employee's regular rate of compensation for missed/improper meal and/or rest periods; (5) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and similarly AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (6) failed and continues to fail to place COMPLAINANT and similarly AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (7) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (8) made unlawful deductions from COMPLAINANT and similarly AGGRIEVED EMPLOYEES' paychecks; (9) failed and continues to fail to timely pay wages to COMPLAINANT and similarly AGGRIEVED EMPLOYEES during employment and upon separation of employment; (10) failed and continues to fail to reimburse COMPLAINANT and similarly AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (11) conducts illegal background criminal and financial checks as a condition of COMPLAINANT's and similarly AGGRIEVED EMPLOYEES' hire or maintaining their employment; and (12) requires COMPLAINANT and similarly AGGRIEVED EMPLOYEES to impermissibly disclose arrests and/or convictions on their employment applications and sign off on same. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

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

At all relevant times, EMPLOYER has failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

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

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

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

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

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

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)

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

to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001, section 7(A)(3) (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided”).

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

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

COMPLAINANT and similarly AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and or work through part or all their meal periods due to the nature and constraints of their job duties, lack of relief workers available, requirement to stay on premises, and or commentary from management pressuring them to take meal periods past the fifth hour of work or to otherwise take noncompliant meal periods or skip meal periods completely in order to complete maintenance assignments and/or other work related duties throughout the employment of COMPLAINANT and similarly AGGRIEVED EMPLOYEES. For example, at times COMPLAINANT’s scheduled shift began at 8:00 am but was unable to take a meal break until at or after 3:00 pm due to the nature and constraints of his job duties, lack of relief workers, and/or commentary from management.

EMPLOYER was informed of COMPLAINANT and similarly AGGRIEVED EMPLOYEES’ inability to take compliant meal periods due to their need to tend to their assigned properties, other job duties, and lack of relief workers available because COMPLAINANT and similarly AGGRIEVED EMPLOYEES so informed EMPLOYER. EMPLOYER failed to take any action to remedy the situation in order to allow COMPLAINANT and similarly AGGRIEVED EMPLOYEES to take compliant, non-interrupted meal periods. EMPLOYER failed to relieve

COMPLAINANT and similarly AGGRIEVED EMPLOYEES for meal periods and failed to maintain accurate record of non-compliant meal periods taken by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. Instead, EMPLOYER regularly recorded COMPLAINANT's meal breaks as if they were taken at noon, even though a meal period was not actually afforded at this time and/or were otherwise not in accordance with California law.

Despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and practice of automatically deducting at least 30 and/or requiring COMPLAINANT and other AGGRIEVED EMPLOYEES to clock out at least thirty minutes (and sometimes 60 minutes) per shift for these missed/improper and/or otherwise unlawful meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES did not receive timely, compliant, uninterrupted meal periods, resulting in underpayment of minimum and overtime pay. As a result of the unlawful meal period practices, EMPLOYER also failed to maintain accurate records of the total hours worked by COMPLAINANT and AGGRIEVED EMPLOYEES.

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.

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

Based on information and belief, EMPLOYER also illegally rounded the start and end times of employees' 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.

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 to COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

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.

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

meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate of compensation for purposes of calculating the owed meal period premium.

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

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order No. 5-2001, section 12(A). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code section 226.7; IWC Wage Order No. 5-2001, section 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided").

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

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

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, section 20 (establishing that "[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, restricted to premises, and/or late due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties and or commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant rest breaks. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were also required to be on call in order to tend to the needs of the apartment units assigned.

COMPLAINANT and other AGGRIEVED EMPLOYEES were required to always be on call, such that rest breaks were only taken once jobs were completed/if time permitted.

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section §§ 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.³

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Based on information and belief, EMPLOYER failed to pay proper overtime rates to AGGRIEVED EMPLOYEES due to EMPLOYER's failure to incorporate all forms of non-discretionary compensation, including but not limited to, shift differential pay and or non-discretionary bonus pay, into the regular pay rate for purposes of calculating the owed overtime rate, resulting in the underpayment of overtime wages owed. For example, during the pay period of August 7, 2021, through August 20, 2021, COMPLAINANT worked overtime and earned a bonus, but said bonus was not factored into COMPLAINANT's regular rate of pay for purposes of correctly calculating the owed overtime rate.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty,

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

for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

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

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

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

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

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

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

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

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

EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT all AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the 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 also unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

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

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

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

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

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

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

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

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

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

EMPLOYER's wage statements that it provided to COMPLAINANT and all AGGRIEVED EMPLOYEES failed to among other things, indicate the correct name and address of the legal entity that is the employer, indicate earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by the COMPLAINANT and all AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods and time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Employer's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER 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

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by failing to pay AGGRIEVED EMPLOYEES for all hours worked and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code § 210. Each violation results in a separate civil penalty, for each

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

AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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”).

vehicle.

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

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

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, a way by which to request a copy of the report, 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 and/or agree to submit in writing to unlawful criminal and/or financial background check(s) as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA and in violation of other California laws, including but not limited to Labor Code sections 1024.5 and 432.7. By requiring COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER also violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required COMPLAINANT and other AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by

the requirements set forth in CA Civil Code section 1786, et seq. and 15 U.S.C. section 1681, et seq., and thus was an unlawful background check. Based on information and belief, EMPLOYER also required COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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 and financial checks, EMPLOYER also violated Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.”).

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

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to Labor Code section 432.7 and the Fair Chance Act, asked about arrests not resulting in convictions on its employment application, asked about convictions prior to extending an 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 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code 432.5 by unlawfully requiring the AGGRIEVED EMPLOYEES to agree in writing to disclose arrests or convictions as a condition of employment.

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), 2699.3(c), 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-five 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