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Assigned for All Purposes

Judge Peter Wilson

CX-102

7 Attorneys for Plaintiff VINCE BURKLUND
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 ORANGE**
12

13 VINCE BURKLUND on behalf of himself,
14 the State of California, and others similarly
situated and aggrieved,

15 Plaintiff,

17 v.

18 GARDEN GROVE UNIFIED SCHOOL
19 DISTRICT, a California public school
district; and DOES 1-100, inclusive,

20 Defendants.
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Case No.: 30-2022-01260573-CU-OE-CXC

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

1 Plaintiff, VINCE BURKLUND (“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 GARDEN GROVE UNIFIED SCHOOL DISTRICT, a California
4 public school district; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

26 5. PLAINTIFF is currently employed by DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee in the maintenance department of Garden Grove
28 Unified School District for over five years until he went on leave in or around late March 2021 or

1 early April 2021.

2 6. DEFENDANTS own, operate, or otherwise manage public schools, including but not
3 limited to elementary schools (with pre-school programs), intermediate schools, and high schools
4 for over 40,000 students in Garden Grove Unified School District in Orange County, California.¹

5 7. On information and belief, Defendant GARDEN GROVE UNIFIED SCHOOL
6 DISTRICT, is a California public school district, duly licensed to conduct business in the State of
7 California, and it maintains its principal place of business in Orange County, California.

8 8. 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 9. 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 10. 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 or permit to work; or (3)

28 ¹ See <https://www.ggusd.us/media/1760/schools-at-a-glance.pdf>. Last visited on May 14, 2022.

1 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
2 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
3 was to reach situations in which multiple entities control different aspects of the employment
4 relationship. Supervision of the work, in the specific sense of exercising control over how services
5 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
6 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
7 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
8 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
9 California, applying a less stringent standard to what constitutes sufficient control by a business
10 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
11 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
12 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
13 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
14 employment,” *Id.* at 875 [emphasis added].

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

22 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
23 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
24 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
25 across all of their schools/locations and subjected all of the Aggrieved Employees to these same
26 policies and practices regardless of the location(s) or school(s) where they worked.

27 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
28 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved

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

19 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
20 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
21 collectively held the right to control virtually every aspect of PLAINTIFF's and Aggrieved
22 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
23 PLAINTIFF seeks relief in this Complaint.

24 15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
25 control over, applied the same policies and practices, and engaged in the same acts and omissions
26 with regard to the other Aggrieved Employees.

27 16. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS
28 must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties

1 under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to
2 perform services from which they benefited, and furthermore that the aforementioned entities had
3 the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all
4 relevant times herein, so as to be considered the joint employers of PLAINTIFF.

5 17. By reason of their status as joint employers of PLAINTIFF and Aggrieved
6 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
7 Code and applicable Wage Orders as to PLAINTIFF and other Aggrieved Employees.

8 **PAGA ALLEGATIONS**

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

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

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

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

27 20. On March 10, 2022, PLAINTIFF, through his counsel, gave written notice by online
28 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that

1 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
2 in this Complaint ("PAGA Letter"). Attached hereto as **Exhibit 1** is a true and correct copy of the
3 PAGA Letter also sent to DEFENDANTS via certified mail.

4 21. The PAGA Letter outlined PLAINTIFF's claims for violations of the California
5 Labor Code and the applicable wage orders on behalf of himself, the State of California and other
6 Aggrieved Employees.

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

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

15 **FACTUAL AND LEGAL ALLEGATIONS**

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

20 25. PLAINTIFF was employed by DEFENDANTS during the relevant period as a full-
21 time, non-exempt employee in the maintenance department of Garden Grove Unified School
22 District. PLAINTIFF worked for DEFENDANTS for over five years until he went on leave in or
23 around late March 2021 or early April 2021. Based on information and belief, PLAINTIFF
24 continued to receive wage statements from DEFENDANTS after going on leave. PLAINTIFF was
25 typically scheduled to work at least eight (8) hours per shift, five (5) days per week.

26 26. **Unpaid Wages.** DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
27 Employees for all hours worked, resulting in the underpayment of minimum wages. DEFENDANTS
28 failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked by virtue of,

1 including but not limited to, DEFENDANTS' automatic deduction policies and practices for meal
2 periods (described below), failure to relieve employees of all duties and employer control during
3 unpaid meal periods or otherwise unlawful meal period practices, time-rounding policies and
4 practices, payment according to scheduled hours worked instead of actual time worked, and
5 mandated pre-shift/post-shift and/or other mandated off-the-clock work policies and practices.

6 27. PLAINTIFF and Aggrieved Employees were consistently unable to take off duty,
7 thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted
8 meal periods and/or work through part or all their meal periods due to the nature and constraints of
9 their job duties, understaffing, and/or commentary from supervisors pressuring them to take non-
10 compliant meal periods or skip meal periods completely. For example, PLAINTIFF was regularly
11 interrupted during meal periods due to work-related communications and/or text messages from his
12 coworkers and/or managers/ supervisors, and/or was required to complete other off-the-clock work
13 tasks during purported meal periods. Based on information and belief, despite failing to provide
14 lawful meal periods, DEFENDANTS implemented a policy and/or practice of automatically
15 deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive
16 knowledge that the purported meal periods were short, not taken, interrupted, or not relieved of all
17 duties and employer control, thereby depriving PLAINTIFF and Aggrieved Employees of all earned
18 wages.

19 28. Based on information and belief, DEFENDANTS rounded the start and end times of
20 employee meal periods and true shift start and end times resulting in PLAINTIFF and other
21 Aggrieved Employees not being paid all owed wages for all time worked. For example,
22 DEFENDANTS compensated PLAINTIFF only for scheduled hours worked rather than all hours
23 actually worked, by requiring PLAINTIFF and other Aggrieved Employees to sign a time sheet that
24 notated only the scheduled hours worked in the pay period. Based on information and belief
25 DEFENDANTS only paid PLAINTIFF and the Aggrieved Employees for the scheduled hours
26 notated on the time sheet, as opposed to all hours actually worked.

27 29. Based on information and belief, DEFENDANTS implemented a policy and practice
28 of paying PLAINTIFF and Aggrieved Employees for scheduled work hours only and not the hours

1 actually worked due in part to mandated off-the-clock work. PLAINTIFF and other Aggrieved
2 Employees were required to perform pre-shift and post-shift off-the-clock work due to
3 DEFENDANTS' failure to record the true shift start times and shift end times for PLAINTIFF and
4 Aggrieved Employees. Moreover, DEFENDANTS required PLAINTIFF and Aggrieved
5 Employees to submit to temperature screenings and notate their temperature on a sheet prior to
6 beginning their scheduled shift. These temperature screenings took at least a few minutes to
7 complete. This work time was not recorded and was not compensated, depriving PLAINTIFF and
8 Aggrieved Employees of all owed wages for all hours worked.

9 30. Based on information and belief, DEFENDANTS failed to pay Aggrieved
10 Employees for time they were required to spend completing orientation, trainings, policy
11 questionnaires, and/or time spent completing the onboarding process including but not limited to
12 reviewing documents and policies provided by DEFENDANTS. Based on information and belief,
13 this work time was completed off-the-clock and was not compensated.

14 31. DEFENDANTS' time rounding, automatic deduction policies and practices as well
15 as mandated off-the-clock work described herein resulted in a failure to account for all hours worked
16 and deprived PLAINTIFF and Aggrieved Employees of all owed wages.

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

22 33. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
23 engaged in these same herein described unlawful practices with regard to all of the Aggrieved
24 Employees and that DEFENDANTS applied these same herein described unlawful practices to all
25 of their employees that it applied to PLAINTIFF.

26 **FIRST CAUSE OF ACTION**

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

28 **2698, *ET SEQ.***

1 40. Based on information and belief, DEFENDANTS had and continue to have a
2 continuous policy of requiring PLAINTIFF and the Aggrieved Employees to perform work prior to
3 clocking in for their shifts and/or outside of their scheduled shift times and during uncompensated
4 meal periods, resulting in unpaid minimum wages.

5 41. Based on information and belief, DEFENDANTS had actual or constructive
6 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
7 meal periods, failing to relieve employees of all duties and employer control during unpaid meal
8 periods, mandated off-the-clock work, and policy/ practice of payment according to scheduled work
9 time rather than actual work time resulted in the underpayment of minimum wages owed to
10 PLAINTIFF and Aggrieved Employees.

11 42. Therefore, under the provisions of PAGA and Labor Code sections 558, 558.1, 1194,
12 1194.2, 1197, 1197.1, 2699, and all applicable Wage Orders, as well as all interpretations of these
13 laws by California Courts and administrative bodies, as well as any other law that is enforceable
14 through PAGA, DEFENDANTS are liable for the following penalties:

- 15 a. All statutorily-specified penalties recoverable under PAGA per the relevant
16 California Labor Code provisions listed herein only if permitted by the PAGA
17 statute; and
18 b. Default PAGA penalties for any violation of the enumerated Labor Code
19 violations without a civil penalty recoverable under PAGA, all in the default
20 amounts provided by Labor Code section 2699(f).

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

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

26 **PRAYER FOR RELIEF**

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

1. For civil penalties according to proof (75% payable to the LWDA and 25% payable to Aggrieved Employees);

2. For reasonable attorney's fees and costs of suit; and

3. For such other and further relief that the Court deems just and proper.

Dated: May 17, 2022

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Blake R. Jones, Esq.
Attorneys for Plaintiff,
VINCE BURKLUND

EXHIBIT

1



CROSNER LEGAL

Public Interest Rights

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March 10, 2022

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:

Garden Grove Unified School District
10331 Stanford Ave.,
Garden Grove, CA 92840

Garden Grove Unified School District
11852 Knott Ave.
Garden Grove, CA 92841

Bob Harden, President
Garden Grove Unified School District
Board of Education
10331 Stanford Ave.,
Garden Grove, CA 92840

Lan Quoc Nguyen, Vice President/Trustee
Garden Grove Unified School District
Board of Education
10331 Stanford Ave.,
Garden Grove, CA 92840

Al Mijares, Orange County Superintendent of
Schools
Orange County Department of Education
200 Kalmus Drive
Costa Mesa, CA 92626

Al Mijares, Orange County Superintendent of
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Orange County Department of Education
P.O. Box 9050
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Walter Muneton, Member
Garden Grove Unified School District
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Garden Grove Unified School District
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10331 Stanford Ave.,
Garden Grove, CA 92840

Gabriela Mafi, Superintendent
Garden Grove Unified School District
Board of Education
10331 Stanford Ave.,
Garden Grove, CA 92840

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Garden Grove Unified School District; Orange County Superintendent of Schools; Al Mijares; Bob Harden; Lan Quoc Nguyen; Dina L. Nguyen; Walter Muneton; Teri Rocco; and Gabriela Mafi
Date: March 10, 2022
Subject: *Vince Burklund v. Garden Grove Unified School District et. al.*

Introduction

This office represents COMPLAINANT, Vince Burklund (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: Garden Grove Unified School District, Orange County Superintendent of Schools, Al Mijares, Bob Harden, Lan Quoc Nguyen, Dina L. Nguyen, Walter Muneton, Teri Rocco, and Gabriela Mafi (hereinafter, these entities, its managing agents, and individuals are referred to 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 (“NON-EXEMPT AGGRIEVED EMPLOYEES”), and on behalf of all current and former exempt employees employed by EMPLOYER within one year of the date of this notice (“EXEMPT 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.

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, 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, 204.3, 216, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

**The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT
AGGRIEVED EMPLOYEES AND EXEMPT 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 and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT 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

EMPLOYER operates, or otherwise manages public schools from grades pre-k through 12th grade in Orange County for nearly 40,500 students. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and/or the applicable California Industrial Welfare Commission (“IWC”) Wage Order.

COMPLAINANT is currently employed by EMPLOYER but is on leave and continues to receive wage statements from EMPLOYER. COMPLAINANT worked for EMPLOYER in the maintenance department for over five years until his last day worked in or around late March 2021 or early April 2021. COMPLAINANT was a full-time, non-exempt employee that was typically scheduled to work at least eight (8) hours per shifts, five (5) days per week.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wages for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the employee’s regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal background criminal and/or financial checks as a condition of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT EMPLOYEES’ hire or maintaining their employment; and (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer or employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT’s, NON-EXEMPT AGGRIEVED EMPLOYEES, and/or EXPEMPT AGGRIEVED EMPLOYEES’ criminal history on their employment

applications and sign off on same as a condition of employment. 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 NON-EXEMPT AGGRIEVED EMPLOYEES. The applicable IWC Wage Order(s), 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 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 NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding, automatic meal break deductions, and practices, and/or 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 NON-EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts. For example, EMPLOYER did not record COMPLAINANT’s hours on a daily basis. Instead, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to sign a time sheet every two weeks that indicated the scheduled number of hours worked for the two-week period, failing to indicate the total hours actually worked. Moreover, the time sheet(s) did not accurately record the start and end times of each work shift.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods. For example, EMPLOYER did not require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to record their meal period(s), nor did EMPLOYER provide any instruction as to the method by which NON-EXEMPT EMPLOYEES were to record their meal periods.

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

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and the applicable Wage Order, 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 NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

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

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable Wage Order(s), 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 meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). 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 NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES did not receive legally compliant thirty (30) minute first meal breaks. COMPLAINANT and NON-EXEMPT

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

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, understaffing, and/or commentary from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. For example, COMPLAINANT's scheduled shift regularly started at 6:00 am with a meal break regularly scheduled at 11:00 am, exactly five hours after his scheduled shift start time. However, COMPLAINANT regularly performed pre-shift off-the-clock work in the form of temperature checks that lasted at least a few minutes each day. This work time was not recorded, was not compensated and was not taken into account when scheduling COMPLAINANT's meal period. As a result, all meal periods that were taken five (5) hours after the start of a scheduled shift time were late as they were taken five hours after the true shift start time. Moreover, on at least a couple of shifts per month, COMPLAINANT took a meal period well after the fifth hour of work due to the nature and constraint of his job duties including but not limited to completing repairs, traveling to a different school within the district, and/or completing other assigned tasks. Additionally, COMPLAINANT was regularly interrupted during meal periods due to work-related communications and/or text messages from his coworkers and/or managers/ supervisors. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also regularly unable to take timely, duty-free meal periods, and/or were interrupted during their meal periods.

As explained herein, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut short due to their need to complete assigned job duties, mandated pre-shift off-the-clock work, and/or work-related interruptions during purported meal periods.

Despite failing to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for these missed/unlawful meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive compliant meal periods.

Based on information and belief, EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER either failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods or failed to keep any record of meal periods. Based on further information and belief, EMPLOYER illegally rounded the start and end times of meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or

shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. Despite failing to record the start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods, EMPLOYER systematically deducted thirty (30) minutes per shift irrespective of whether a full thirty (30) minute meal period was provided.

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

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/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 NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal period before the end of the tenth hour of work. Based on further information and belief, EMPLOYER only provided a single meal period per shift, regardless of the number of hours worked, and that single meal period was non-compliant.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of wages at their respective regular rates of compensation for each workday a proper meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate or 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, and the applicable Wage Order, 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 NON-EXEMPT 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,

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"); Applicable 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

and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, section 12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). 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 rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code section 226.7; all applicable IWC Wage Orders, 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 NON-EXEMPT AGGRIEVED EMPLOYEES with lawful rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

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

Based on information and belief, any purported rest periods were interrupted, cut short, on duty, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, understaffing, and/or commentary from supervisors pressuring them to skip rest breaks completely and/or take non-compliant rest periods. For example, COMPLAINANT regularly received work related text messages to his personal phone throughout his shift, including but not limited to messages received during his purported rest periods. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also interrupted during their purported ten-minute rest periods.

Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties/ assigned tasks such that rest breaks were only taken once jobs were completed/as time permitted.

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").

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest breaks.

Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. Furthermore, EMPLOYER failed to pay a rest period premium for each day in which there was a missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and the applicable Wage Order, 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 NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

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

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

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

EMPLOYER failed to compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deductions and time rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated pre-shift off-the-clock work policies and/or practices and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

As explained above, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely off duty, thirty-minute, uninterrupted meal periods. Based on information and belief, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that the purported meal periods were short, not taken, interrupted, or not relieved of all duties and employer control.

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods and true shift start and end times resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked. For example, EMPLOYER compensated COMPLAINANT only for scheduled hours worked rather than all hours actually worked, by requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to sign a time sheet that notated only the scheduled hours worked in the two week period.

EMPLOYER's failure to pay for all time worked by virtue of its time-rounding and auto-deduction practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or forty hours in a week.

Based on information and belief, EMPLOYER had and continues to have a continuous policy of paying COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for scheduled hours, rather than actual hours worked due to EMPLOYER's mandated off-the-clock work. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform pre-shift and post-shift off-the-clock work due to EMPLOYER's failure to record the true shift start times and shift end times for NON-EXEMPT AGGRIEVED EMPLOYEES. Moreover, EMPLOYER required COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to submit to temperature screenings and notate their temperature on a sheet prior to beginning their scheduled shift. These temperature screenings took at least a few minutes to complete. This work time was not recorded and was not compensated, depriving COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum wages for all hours worked.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, trainings, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing documents and/or policies provided by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated.

EMPLOYER's automatic deduction policies and practices as well as mandated off-the-clock work described herein resulted in a failure to account for all hours worked and deprived COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all owed minimum wages and overtime wages, and further resulted in record keeping violations.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices, failure to provide off-duty meal periods, and other mandated off-the-clock work described above resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT 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 the applicable Wage Order, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT 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; All applicable IWC Wage Orders, section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

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

Namely, EMPLOYER's failure to record all hours worked, automatic deduction and time rounding policies and practices for meal periods, start shift times and end times, and mandated off-the-clock work described above resulted in the failure to account for all hours worked and thus the denial of

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"); Applicable 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").

minimum wages as well as overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Based on information and belief, EMPLOYER failed to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California overtime laws.

Based on further information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular pay rate(s) of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on further information and belief, EMPLOYER failed to properly blend multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and the applicable Wage Order, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and the applicable Wage Order, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT 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: Based on information and belief, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and shift start and end times/ or other required off-the-clock work described herein) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary shift differential pay and bonuses, and/or other non-discretionary compensation into the sick leave pay rate calculation.

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 to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

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, based on information and belief, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

Throughout the relevant time period, EMPLOYER failed to provide notice of the sick leave amount balance left for COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, and thus affected their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and all NON-EXEMPT 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 NON-EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide all NON-EXEMPT 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 NON-EXEMPT 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 NON-EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁶

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

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with lawful meal and rest periods and premium wages, the wage statements EMPLOYER issued to COMPLAINANT and non-exempt AGGRIEVED EMPLOYEES 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 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

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).

Moreover, EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES failed to among other things, 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 NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods, failure to record all hours worked, time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*) which results in a violation of Labor Code section 226(a). 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 NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

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 NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

Separately, EMPLOYER violated Labor Code section 226 because the wage statements issued by EMPLOYER failed to list the correct name and address of the legal entity that is the employer. Based on further information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, that failed to list any address at all for the legal entity that is the employer. As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information, including but not limited to the name and address of the legal entity that is the employer.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT 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 NON-EXEMPT 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

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

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

Moreover, based on information and belief, EMPLOYER paid wages only once a month, on the tenth of every month, in violation of Labor Code section 204. For example, EMPLOYER paid COMPLAINANT his wages only on the tenth of every month. COMPLAINANT was given the option to receive up to 30% of his paycheck on the 25th of every month. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES received their wages only once a month in violation of Labor Code section 204.

Labor Code section 204.3: Under Labor Code section 204.3, an employee “may receive, in lieu of overtime compensation, compensating time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law.” Based on information and belief, EMPLOYER violated Labor Code section 204.3, by among other things, failing to pay the accrued compensation time off at the regular rate of pay earned by the employee at the time the NON-EXEMPT AGGRIEVED EMPLOYEE received payment. Moreover, based on information and belief, upon termination and/or resignation, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES all unused compensating time off at the higher rate of either the average regular rate of pay received by the NON-EXEMPT AGGRIEVED EMPLOYEE during the last three years of employment, or the final regular rate of pay received by the employee, in violation of Labor Code section 204.3.

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 NON-EXEMPT AGGRIEVED EMPLOYEES minimum wages and overtime wages which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all NON-

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

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES on the regular pay day without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay. Moreover, NON-EXEMPT 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 and/or paid time off 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 NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT 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 § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, "for purposes of [section 2802], the term

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").

‘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, § 9 (b).

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

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of EMPLOYER.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for EMPLOYER’s business expenses, including but not limited to, use of COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ mobile phone and data plan usage and charges. For example, COMPLAINANT received calls and messages to his personal phone from managers, supervisors and/or coworkers for work related purposes. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES used their personal phone for work-related purposes on a daily basis.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cell phone/data plan charges incurred as a result of being required to use their personal cell phones for work-related purposes.

Moreover, COMPLAINANT was required to use his personal tools, including but not limited to hand tools (such as a hammer, screwdriver, and wrench) and power tools (such as a drill and/or saw). COMPLAINANT used his personal tools to fulfill his job duties and complete repairs as directed by EMPLOYER.

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

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal and Financial Background Checks:

Unlawful Financial and Criminal Background Checks:

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). 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 ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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 further information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to these unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By having NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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.”).

Unlawful Inquires into Criminal History

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. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES 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 the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, and the applicable Wage Order(s) 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 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

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 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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 script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC