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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

CIARA GRAYSON, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

HARVARD PARTNERS HOME HEALTH,
INC., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. **CVRI 2203294**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2750.3 *et seq.*,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

1 Plaintiff Ciara Grayson (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 7 INTRODUCTION

8 1. PLAINTIFF brings this action against Defendant Harvard Home Health Partners,
9 Inc. (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for herself,
10 and on behalf of all current and former aggrieved employees that worked for DEFENDANT.
11 PLAINTIFF does not seek to recover anything other than penalties as permitted by
12 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage
13 violations, PLAINTIFF does not seek underlying general and/or special damages for those
14 violations, but simply the civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 4. Defendant Harvard Home Health Partners, Inc. (“DEFENDANT”) in order to
24 service their customers, hires workers to aid DEFENDANT in providing healthcare services.
25 The cost, as proscribed by law, of the personnel hired to work for DEFENDANT, includes not
26 only the pay and overtime pay of these employees but the cost of the employer's share of tax
27 payments to the federal and state governments for income taxes, social security taxes, medicare
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1 insurance, unemployment insurance and payments for workers' compensation insurance
2 ("Business Related Expenses"). To avoid the payment of these legally proscribed Business
3 Related Expenses to the fullest extent possible, DEFENDANT devised a scheme to place the
4 responsibility for the payment of these costs and expenses of DEFENDANT on the shoulders
5 of PLAINTIFF and other Nurses. As employer, DEFENDANT is legally responsible for the
6 payment of all these Business Related Expenses. This lawsuit is brought on behalf of the
7 Certified Nurse Assistants, Licensed Vocational Nurses, Registered Nurses and other similar
8 job titles for persons who worked for DEFENDANT in California and were classified as
9 independent contractors, in order to collect the wages due them as employees of DEFENDANT,
10 the cost of the employer's share of payments to the federal and state governments for income
11 taxes, social security taxes, medicare insurance, unemployment insurance and payments for
12 workers' compensation insurance, plus penalties and interest.

13 14 **THE PARTIES**

15 5. DEFENDANT at all relevant times mentioned herein conducted and continues
16 to conduct substantial and regular business in the State of California.

17 6. DEFENDANT operates a business that connects individuals looking for care-
18 giving services on demand.

19 7. PLAINTIFF was employed by DEFENDANT as a Certified Nurse Assistant from
20 February of 2021 to September of 2021 and again from February of 2022 to May of 2022 and
21 was classified by DEFENDANT as an independent contractor during her entire employment
22 with DEFENDANT.

23 8. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person
24 or employer to engage in . . . [w]illful misclassification of an individual as an independent
25 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less
26 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
27 each violation, in addition to any other penalties or fines permitted by law.” It is further
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1 provided that, in the event that an employer is found to have engaged in “a pattern or practice
2 of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and
3 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
4 penalties or fines permitted by law.” Cal. Labor Code § 226.8.

5 9. Here, DEFENDANT has willfully misclassified PLAINTIFF and other Certified
6 Nursing Assistants, Licensed Vocational Nurses and Registered Nurses, and other similarly
7 situated persons with similar job titles collectively referred herein as “Nurses” as described in
8 Cal. Labor Code § 226.8 and Labor Code Section 2750.3 *et seq.*, and further, that
9 DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated by the
10 California Labor Code.

11 10. Upon hire, the position of a Nurse was represented by DEFENDANT to
12 PLAINTIFF and the other Nurses as an independent contractor position capable of paying an
13 hourly rate for time worked for DEFENDANT. PLAINTIFF and other Nurses were paid an
14 hourly rate to perform services on DEFENDANT’s behalf.

15 11. To perform their job duties, the PLAINTIFF and the other Nurses performed work
16 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
17 complete control over the work performed and the manner and means in which the work was
18 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
19 as to how to perform their services.

20 12. California Labor Code § 3357 defines “employee” as “every person in the service
21 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
22 oral or written, whether lawfully or unlawfully employed.” In addition to the California Labor
23 Code’s presumption that workers are employees, the California Supreme Court has determined
24 the most significant factor to be considered in distinguishing an independent contractor from
25 an employee is whether the *employer or principal has control or the right to control the work*
26 *both as to the work performed and the manner and means in which the work is performed.*
27 DEFENDANT heavily controlled both the work performed and the manner and means in which
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1 PLAINTIFF and the other Nurses performed their work in that:

2 (a) PLAINTIFF and other Nurses were not involved in a distinct business, but
3 instead were provided with instructions as to how to perform their work and the manner and
4 means in which the work was to be performed by means of DEFENDANT's manuals and
5 written instructions;

6 (b) PLAINTIFF and other Nurses were continuously provided with training
7 and supervision, including following DEFENDANT's company documents and received
8 training from DEFENDANT as to how and in what way to perform services;

9 (c) DEFENDANT set the requirements as to what policies and procedures all
10 of the Nurses were to follow;

11 (d) PLAINTIFF and other Nurses had no opportunity for profit or loss because
12 DEFENDANT only paid these employees based on the hours they worked for DEFENDANT
13 and DEFENDANT controlled and assigned the weekly schedules PLAINTIFF and other Nurses
14 were required to work. DEFENDANT also controlled which Nurses would receive a particular
15 medical assignment;

16 (e) PLAINTIFF and other Nurses performed healthcare services which is part
17 of DEFENDANT's principal business and is closely integrated with and essential to the
18 employer's business of providing healthcare services to their customers;

19 (f) PLAINTIFF and other Nurses performed the work themselves and did not
20 hire others to perform their work for them;

21 (g) PLAINTIFF and other Nurses did not have the authority to make
22 employment-related personnel decisions;

23 (h) PLAINTIFF and other Nurses performed their work in a particular order
24 and sequence in accordance with DEFENDANT's company policy; and,

25 (i) DEFENDANT had the "right" to control every critical aspect of
26 DEFENDANT's daily services in that DEFENDANT provided step-by-step instructions to
27 PLAINTIFF and other Nurses as to the entire process of assisting clients. PLAINTIFF and
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1 other Nurses provided services ONLY for DEFENDANT's customers, which DEFENDANT
2 controlled via the company's technology.

3 13. As a result, stripped of all the legal fictions and artificial barriers to an honest
4 classification of the relationship between PLAINTIFF and all the other Nurses on the one hand,
5 and DEFENDANT on the other hand, PLAINTIFF and all the other Nurses are and were
6 employees of DEFENDANT and not independent contractors of DEFENDANT and should
7 therefore be properly classified as non-exempt, hourly employees.

8 14. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to herself
11 and all individuals who worked for DEFENDANT in California as Certified Nursing Assistants,
12 Licensed Vocational Nurses and Registered Nurses, and other similarly situated persons with
13 similar job titles and who were classified as independent contractors ("AGGRIEVED
14 EMPLOYEES") during the time period of April 22, 2021 until a date as determined by the
15 Court (the "PAGA PERIOD").

16 15. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
17 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
18 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
19 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
20 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2750.3 *et seq.*, 2802, California Code of
21 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
22 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
23 employees within the meaning of Labor Code § 2699, *et seq.*

24 16. As a matter of company policy, practice and procedure, DEFENDANT has
25 unlawfully, unfairly and/or deceptively classified every AGGRIEVED EMPLOYEE as
26 "independent contractors" in order to unlawfully avoid compliance with all applicable federal
27 and state laws that require payment for all time worked, business expenses, and the employer's
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1 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal
2 and state governments and the AGGRIEVED EMPLOYEES, PLAINTIFF and the
3 AGGRIEVED EMPLOYEES were underpaid throughout their employment with
4 DEFENDANT. The true names and capacities, whether individual, corporate, associate or
5 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown
6 to PLAINTIFF who therefore sue these Defendants by such fictitious names pursuant to Cal.
7 Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, alleges that
8 each of the Defendants designated herein is legally responsible in some manner for the unlawful
9 acts referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect
10 the true names and capacities of the Defendants when they have been ascertained and become
11 known.

12 17. The agents, servants and/or employees of the Defendants and each of them
13 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
14 as the agent, servant and/or employee of the Defendants, and personally participated in the
15 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
16 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
17 all Defendants are jointly and severally liable to the PLAINTIFF and the AGGRIEVED
18 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
19 agents, servants and/or employees.

20 THE CONDUCT

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22 18. The finite set of tasks required of PLAINTIFF and the other AGGRIEVED
23 EMPLOYEES as defined by DEFENDANT was executed by them through the performance of
24 non-exempt labor.

25 19. Although PLAINTIFF and the other AGGRIEVED EMPLOYEES performed
26 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
27 performance, DEFENDANT instituted a blanket classification policy, practice and procedure
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1 by which all of these AGGRIEVED EMPLOYEES were classified as "independent contractors"
2 exempt from compensation for overtime worked, meal breaks and rest breaks, and
3 reimbursement for business related expenses. By reason of this uniform misclassification, the
4 AGGRIEVED EMPLOYEES were also required to pay DEFENDANT 's share of payroll taxes
5 and mandatory insurance premiums. As a result of this uniform misclassification practice,
6 policy and procedure applicable to PLAINTIFF and the other AGGRIEVED EMPLOYEES
7 who performed this work for DEFENDANT, DEFENDANT engaged in a company-wide
8 policy, practice and procedure which uniformly failed to properly classify PLAINTIFF and the
9 other AGGRIEVED EMPLOYEES as employees and thereby failed to pay them overtime
10 wages for overtime worked, reimbursement of business related expenses, failed to provide them
11 with meal and rest breaks, and failed to reimburse these employees for the employer's share of
12 payroll taxes and mandatory insurance. The proper classification of these employees is
13 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation
14 to meet this burden, DEFENDANT violated the California Labor Code and regulations
15 promulgated thereunder as herein alleged. DEFENDANT did not have in place a policy,
16 practice or procedure that provided meal and/or rest breaks to PLAINTIFF and the
17 AGGRIEVED EMPLOYEES as evidenced by DEFENDANT's business records which contain
18 no record of these breaks.

19 20. DEFENDANT, as a matter of law, has the burden of proving that employees are
20 properly classified and that DEFENDANT otherwise complies with applicable laws.
21 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
22 AGGRIEVED EMPLOYEES as independent contractors.

23 21. PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were uniformly
24 classified and treated by DEFENDANT as independent contractors at the time of hire and
25 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFF and
26 the AGGRIEVED EMPLOYEES are properly classified under the applicable Industrial Welfare
27 Commission Wage Order and Cal. Lab. Code § 510 as exempt from applicable labor laws.

1 Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and the
2 AGGRIEVED EMPLOYEES in compliance with California labor laws, DEFENDANT's
3 practices violated and continue to violate California law. In addition, DEFENDANT acted
4 deceptively by falsely and fraudulently classifying PLAINTIFF and each AGGRIEVED
5 EMPLOYEE as independent contractors when DEFENDANT knew or should have known that
6 this classification was false and not based on known facts. DEFENDANT also acted
7 deceptively by violating the California labor laws. In doing so, DEFENDANT cheated the
8 competition by paying the AGGRIEVED EMPLOYEES less than the amount competitors paid
9 who complied with the law and cheated the AGGRIEVED EMPLOYEES by not paying them
10 in accordance with California law.

11 22. As a result of their rigorous work schedules, PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
13 were not fully relieved of duty for meal periods. PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
15 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
16 DEFENDANT failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with a
17 second off-duty meal period from time to time in which these employees were required by
18 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
20 accordance with DEFENDANT's strict corporate policy and practice.

21 23. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
22 were also required from time to time to work in excess of four (4) hours without being provided
23 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
24 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
25 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
26 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
27 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

1 PLAINTIFF and the other AGGRIEVED EMPLOYEES were also not provided with one hour
2 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the other
3 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
4 DEFENDANT and DEFENDANT's managers.

5 24. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
6 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
7 incurred by PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
8 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
9 2802, employers are required to indemnify employees for all expenses incurred in the course
10 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
12 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
13 directions of the employer, even though unlawful, unless the employee, at the time of obeying
14 the directions, believed them to be unlawful."

15 25. In the course of their employment PLAINTIFF and the AGGRIEVED
16 EMPLOYEES as a business expense, are required by DEFENDANT to use personal cellular
17 phones and their home offices as a result of and in furtherance of their job duties as employees
18 for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
19 associated with the use of the personal cellular phones and personal vehicles for
20 DEFENDANT's benefit. In order to work as a Nurse for DEFENDANT, PLAINTIFF and the
21 other AGGRIEVED EMPLOYEES are required to communicate with DEFENDANT and as
22 such it is mandatory to have a cell phone that is compatible to remain in constant contact with
23 DEFENDANT and DEFENDANT's customers. As a result, in the course of their employment
24 with DEFENDANT, PLAINTIFF and the other AGGRIEVED EMPLOYEES incurred
25 unreimbursed business expenses which include, but are not limited to, costs related to the use
26 of their personal cellular phones and personal vehicle expenses all on behalf of and for the
27 benefit of DEFENDANT.

26. From time to time, DEFENDANT also failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, the correct amount of time worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and correct amount of net and/or gross wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. As a result, DEFENDANT provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

27. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18).

JURISDICTION AND VENUE

28. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

29. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and 395.5, because PLAINTIFF resides in this County and DEFENDANT (i) currently maintains and at all relevant times maintained its principal offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED EMPLOYEES.

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1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFF and Against All Defendants)**

5 30. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

7 31. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
10 fundamentally a law enforcement action designed to protect the public and not to benefit private
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
16 subject to arbitration.

17 32. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to herself
20 and all individuals who worked for DEFENDANT in California as Certified Nursing Assistants,
21 Licensed Vocational Nurses and Registered Nurses, and other similarly situated persons with
22 similar job titles and who were classified as independent contractors ("AGGRIEVED
23 EMPLOYEES") during the time period of April 22, 2021 until a date as determined by the
24 Court (the "PAGA PERIOD").

25 33. On April 22, 2022, PLAINTIFF gave written notice by electronic mail to the
26 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
27 employer of the specific provisions of this code alleged to have been violated as required by
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1 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
2 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
3 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
4 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

5 34. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
7 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
8 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
9 to pay overtime wages, (e) failed to reimburse employees for required expenses, and (f) failed
10 to provide wages when due, all in violation of the applicable Labor Code sections listed in
11 Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194,
12 1197, 1197.1, 1198, 2750.3 *et seq.*, 2802, California Code of Regulations, Title 8, Section
13 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11040,
14 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties
15 as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as
16 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
17 State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
18 EMPLOYEES.

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20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
22 severally, as follows:

- 23 1. On behalf of the State of California and with respect to all AGGRIEVED
24 EMPLOYEES:
25 A) Recovery of civil penalties as prescribed by the Labor Code Private
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 Attorneys General Act of 2004; and,

2 B) An award of attorneys' fees and cost of suit, as allowable under the
3 law, including, but not limited to, pursuant to Labor Code §2699.

4 Dated: July 27, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

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7 By: /s/ Nicholas De Blouw

8 Norman B. Blumenthal
9 Kyle R. Nordrehaug
Nicholas J. De Blouw

10 *Attorneys for Plaintiff*
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