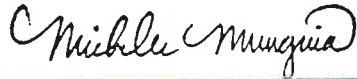


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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 20 2022

BY 
Michelle Munguia DEPUTY

COPY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN BERNARDINO

12 ANGELICA AGUILAR, individually, and
13 on behalf of other members of the general
14 public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

15 Plaintiff,

16 vs.

17 DISTRIBUTION ALTERNATIVES, INC.,
18 a Minnesota corporation; and DOES 1
through 10, inclusive,

19 Defendants.

Case No.: CIVSB2206760

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

BY FAX

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Angelica Aguilar, individually and on behalf of all other members of the public
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice.

23 3. Venue is proper in the Court, because Defendants filed Statement of Information
24 forms with the California Secretary of State designating a principal place of business in
25 Bloomington, County of San Bernardino, in accordance with the California Corporations Code
26 section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because
27 Defendants employ persons within the County of San Bernardino, and employed Plaintiff in
28 this county, and thus a substantial portion of the transactions and occurrences related to this

1 action occurred in this county.

2 **THE PARTIES**

3 4. Plaintiff Angelica Aguilar is a resident of Colton, in San Bernardino County,
4 California. Defendants employed Plaintiff as an hourly paid, non-exempt Client Specialist from
5 approximately October 2021 to January 2022. Plaintiff worked for Defendants at their facility
6 located in Bloomington, California. During her employment, Plaintiff typically worked eight
7 (8) or more hours per day, five (5) days per week, from 6:00 a.m. to 2:30 p.m. Plaintiff's
8 primary job duties included, without limitation, printing shipping labels, preparing shipping
9 packets, and assisting with order management and tracking.

10 5. DISTRIBUTION ALTERNATIVES, INC. was and is, upon information and
11 belief, a Minnesota corporation, and at all times hereinafter mentioned, an employer whose
12 employees are engaged throughout this county and the State of California.

13 6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
14 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
15 complaint and serve such fictitiously named Defendants once their names and capacities
16 become known.

17 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
18 were the partners, agents, owners, or managers of DISTRIBUTION ALTERNATIVES, INC. at
19 all relevant times.

20 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
21 acts and omissions alleged herein was performed by, or is attributable to, DISTRIBUTION
22 ALTERNATIVES, INC. and/or DOES 1 through 10 (collectively, "Defendants" or
23 "DISTRIBUTION ALTERNATIVES"), each acting as the agent, employee, alter ego, and/or
24 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
25 within the course and scope of such agency, employment, joint venture, or concerted activity
26 with legal authority to act on the others' behalf. The acts of any and all Defendants were in
27 accordance with, and represent, the official policy of Defendants.

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9. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

10. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

11. Defendants are a full-service third-party logistics company supplying warehousing and fulfillment services to manufacturers, marketers, and retailers, with more than 2.5 million square feet of operations in Minnesota and Southern California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Lino Lakes, Minnesota, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

13. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Lino Lakes, Minnesota, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various facilities in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees

1 in California, irrespective of their work locations. Upon information and belief, Defendants
2 process payroll for departing employees in the same manner throughout the State of California,
3 regardless of the manner in which each employee's employment ends.

4 14. Defendants continue to employ non-exempt or hourly paid employees in
5 California.

6 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
8 advisors knowledgeable about California labor and wage law, employment and personnel
9 practices, and about the requirements of California law.

10 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
11 members were not paid for all hours worked because all hours worked were not recorded.

12 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive certain wages for
14 overtime compensation and that they were not receiving certain wages for overtime
15 compensation.

16 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive at least minimum
18 wages for compensation and that they were not receiving at least minimum wages for work that
19 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
20 class members were not paid at least minimum wages for work done off-the-clock.

21 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to meal periods in accordance
23 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
24 additional hour of pay at their regular rates of pay when they were not provided with timely,
25 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
26 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
27 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

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1 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to rest periods in accordance
3 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
4 additional hour of pay at their regular rates of pay when they were not authorized and permitted
5 to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class
6 members were not authorized and permitted to take compliant rest periods, nor did Defendants
7 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
8 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

9 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive complete and
11 accurate wage statements in accordance with California law. In violation of the California
12 Labor Code, Plaintiff and class members were not provided complete and accurate wage
13 statements.

14 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that they had a duty to maintain accurate and complete payroll records in
16 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
17 knowingly, and intentionally failed to do so.

18 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to timely payment of all
20 wages earned upon termination of employment. In violation of the California Labor Code,
21 Plaintiff and class members did not receive payment of all wages due, including, but not limited
22 to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
23 time periods.

24 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to timely payment of wages
26 during their employment. In violation of the California Labor Code, Plaintiff and class members
27 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
28 wages, and/or meal and rest period premiums, within permissible time periods.

1 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
3 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
4 and/or drug tests, but failed to do so.

5 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive full reimbursement
7 for all business-related expenses and costs they incurred during the course and scope of their
8 employment and that they did not receive full reimbursement of applicable business-related
9 expenses and costs incurred.

10 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
12 and class members for all hours worked, and that Defendants had the financial ability to pay
13 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
14 represented to Plaintiff and class members that they were properly denied wages, all in order to
15 increase Defendants' profits.

16 **PAGA REPRESENTATIVE ALLEGATIONS**

17 28. At all times herein set forth, PAGA provides that any provision of law under the
18 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
19 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
20 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
21 behalf of themselves and other current or former employees pursuant to procedures outlined in
22 California Labor Code section 2699.3.

23 29. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
24 person who was employed by the alleged violator and against whom one or more of the alleged
25 violations was committed."

26 30. Plaintiff and other current and former employees of Defendants are "aggrieved
27 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
28 or former employees and one or more of the alleged violations were committed against them.

1 31. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
2 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
3 requirements have been met:

4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated, including the facts and theories to support the alleged violations.

8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(a) and any employer response to that notice shall be accompanied
10 by a filing fee of seventy-five dollars (\$75).

11 (c) The LWDA shall notify the employer and the aggrieved employee or
12 representative by certified mail that it does not intend to investigate the
13 alleged violation ("LWDA Notice") within sixty (60) calendar days of the
14 postmark date of the aggrieved employee's notice. Upon receipt of the
15 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
16 calendar days of the postmark date of the aggrieved employee's notice,
17 the aggrieved employee may commence a civil action pursuant to
18 California Labor Code section 2699 to recover civil penalties.

19 32. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
20 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
21 other than those listed in Section 2699.5 after the following requirements have been met:

22 (a) The aggrieved employee or representative shall give written notice by
23 online filing with the LWDA and by certified mail to the employer of the
24 specific provisions of the California Labor Code alleged to have been
25 violated (other than those listed in Section 2699.5), including the facts
26 and theories to support the alleged violation.

27 (b) An aggrieved employee's notice filed with the LWDA pursuant to
28 2699.3(c) and any employer response to that notice shall be accompanied

1 by a filing fee of seventy-five dollars (\$75).

2 (c) The employer may cure the alleged violation within thirty-three (33)
3 calendar days of the postmark date of the notice sent by the aggrieved
4 employee or representative. The employer shall give written notice
5 within that period of time by certified mail to the aggrieved employee or
6 representative and by online filing with the LWDA if the alleged violation
7 is cured, including a description of actions taken, and no civil action
8 pursuant to Section 2699 may commence. If the alleged violation is not
9 cured within the 33-day period, the aggrieved employee may commence
10 a civil action pursuant to Section 2699.

11 33. On April 8, 2022, Plaintiff provided written notice by online filing to the LWDA
12 and by Certified Mail to Defendants of the specific provisions of the California Labor Code
13 alleged to have been violated, including facts and theories to support the alleged violations, in
14 accordance with California Labor Code sections 2699.3. Plaintiff's written notice was
15 accompanied with the applicable filing fee of seventy-five (\$75). The LWDA PAGA
16 Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case
17 Number LWDA-CM-877771-22. A true and correct copy of Plaintiff's written notice to the
18 LWDA and Defendants is attached hereto as "Exhibit 1."

19 34. As of the filing date of this complaint, over 65 days have passed since Plaintiff
20 sent her notice described above to the LWDA, and the LWDA has not responded that it intends
21 to investigate Plaintiff's claims and Defendants have not cured the violations.

22 35. Thus, Plaintiff has satisfied the administrative prerequisites under California
23 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
24 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a),
25 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

26 36. Labor Code section 558(a) provides "[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provision regulating hours and days of work in any order of the Industrial Welfare Commission

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
2 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
3 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
4 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
5 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
6 criminal penalty provided by law.”

7 37. Defendants, at all times relevant to this complaint, were employers or persons
8 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
9 rights by violating various sections of the California Labor Code as set forth above.

10 38. As set forth below, Defendants have violated numerous provisions of both the
11 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
12 Order.

13 39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
14 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
15 private attorney general, seeks assessment and collection of civil penalties for herself, all other
16 aggrieved employees, and the State of California against Defendants for violations of California
17 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
18 1194, 1197, 1197.1, 1198, and 2802.

19 **CLASS ACTION ALLEGATIONS**

20 40. Plaintiff brings this action on her own behalf, as well as on behalf of each and all
21 other persons similarly situated, and thus seeks class certification under California Code of Civil
22 Procedure section 382.

23 41. All claims alleged herein arise under California law for which Plaintiff seeks
24 relief authorized by California law.

25 42. Plaintiff’s proposed class consists of and is defined as follows:

26 All persons who worked for Defendants as non-exempt, hourly
27 paid employees in California, within four years prior to the filing
of the initial complaint¹ until the date of trial (“Class”).

28 ¹ Subject to applicable tolling rules and period(s) of tolling, which include, but are not

1 43. Plaintiff’s proposed subclass consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California and who received at least one wage
4 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial (“Subclass”).

5 44. Members of the Class and Subclass are referred to herein as “class members.”

6 45. Plaintiff reserves the right to redefine the Class and Subclass and to add
7 additional subclasses as appropriate based on further investigation, discovery, and specific
8 theories of liability.

9 46. There are common questions of law and fact as to class members that
10 predominate over questions affecting only individual members, including, but not limited to:

- 11 (a) Whether Defendants required Plaintiff and class members to work over
12 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
13 hours per week and failed to pay all legally required overtime
14 compensation to Plaintiff and class members;
- 15 (b) Whether Defendants failed to pay Plaintiff and class members at least
16 minimum wages for all hours worked;
- 17 (c) Whether Defendants failed to provide Plaintiff and class members with
18 meal periods;
- 19 (d) Whether Defendants failed to authorize and permit Plaintiff and class
20 members to take rest periods;
- 21 (e) Whether Defendants provided Plaintiff and class members with complete
22 and accurate wage statements as required by California Labor Code
23 section 226(a);
- 24 (f) Whether Defendants maintained accurate payroll records as required by
25 California Labor Code section 1174(d);
- 26 (g) Whether Defendants failed to pay earned overtime wages, minimum

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28 limited to, tolling under Emergency Rule 9 of the California Rules of Court.

wages, and/or meal and rest period premiums due to Plaintiff and class members upon their discharge;

(h) Whether Defendants failed to timely pay overtime wages, minimum wages, and/or meal and rest period premiums to Plaintiff and class members during their employment;

(i) Whether Defendants failed to pay Plaintiff and class members for the costs of mandatory physical examinations and/or drug testing;

(j) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

(k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

47. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

(a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect

1 the interests of each class member with whom she has a well-defined
2 community of interest and typicality of claims, as demonstrated herein.
3 Plaintiff acknowledges that she has an obligation to make known to the
4 Court any relationship, conflicts or differences with any class member.
5 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
6 governing class action discovery, certification, and settlement. Plaintiff
7 has incurred, and throughout the duration of this action, will continue to
8 incur costs and attorneys' fees that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 (d) Superiority: The nature of this action makes the use of class action
12 adjudication superior to other methods. A class action will achieve
13 economies of time, effort, and expense as compared with separate
14 lawsuits, and will avoid inconsistent outcomes because the same issues
15 can be adjudicated in the same manner and at the same time for the entire
16 class.

17 (e) Public Policy Considerations: Employers in the State of California
18 violate employment and labor laws every day. Current employees are
19 often afraid to assert their rights out of fear of direct or indirect retaliation.
20 Former employees are fearful of bringing actions because they believe
21 their former employers might damage their future endeavors through
22 negative references and/or other means. Class actions provide the class
23 members who are not named in the complaint with a type of anonymity
24 that allows for the vindication of their rights while simultaneously
25 protecting their privacy.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

4 48. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 49. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
9 be the . . . standard conditions of labor for employees. The employment of any employee . . .
10 under conditions of labor prohibited by the order is unlawful.”

11 50. California Labor Code section 1198 and the applicable IWC Wage Order provide
12 that it is unlawful to employ persons without compensating them at a rate of pay either time-
13 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
14 worked by the person on a daily or weekly basis.

15 51. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
17 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
18 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

19 52. The applicable IWC Wage Order further provides that Defendants are and were
20 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
21 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
22 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
23 employee, including nondiscretionary bonuses and incentive pay.

24 53. California Labor Code section 510 codifies the right to overtime compensation
25 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
26 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
27 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
28 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on

1 the seventh (7th) day of work.

2 54. During the relevant time period, Defendants willfully failed to pay all overtime
3 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
4 members were not paid overtime premiums for all of the hours they worked in excess of eight
5 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
6 in a week, because all hours worked were not recorded.

7 55. First, Defendants, on a company-wide basis, had a policy of requiring employees
8 to undergo mandatory security checks when entering or exiting the premises, either for loss
9 prevention or safety purposes. As a result of Defendants' policy, Plaintiff and class members
10 were required to undergo security screenings when entering or exiting the premises, before
11 clocking in at the beginning of a shift and when returning from a meal period, or after clocking
12 out at the end of a shift and when leaving for their meal period. For example, on days when
13 Plaintiff brought a bag to work, she was required to wait several minutes off-the-clock for a
14 security guard to perform a security check before she was permitted to clock in at the start of
15 her shift and at the end of her meal period. Similarly, before Plaintiff was permitted to leave
16 the premises for her meal period and at the end of her shift, Plaintiff was required to wait several
17 minutes off-the-clock for a security guard to check her bag. Although Defendants' requirement
18 that Plaintiff and class members undergo security checks was mandatory, Defendants did not
19 compensate them for the time they spent off-the-clock before and after shifts or during unpaid
20 meal periods, waiting in line and undergoing these checks while under Defendants' control.

21 56. Further, during the relevant time period, Defendants only provided Plaintiff and
22 class members with one (1) access point to their timekeeping system, thus exacerbating the
23 amount of time Plaintiff and class members waited in line off-the-clock and under Defendants'
24 control, time for which they were not paid. For example, Plaintiff would report to work at the
25 start of her scheduled shift, but would be required to wait at least several minutes in a long line
26 of employees from all departments to clock in (after already having waited to undergo the
27 mandatory security searches).

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57. Defendants knew or should have known that, as a result of these company-wide practices and/or policies, Plaintiff and class members were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually worked.

58. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)**

59. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

60. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 9-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11090(2)(H) (defining “Hours Worked”).

61. As set forth above, during the relevant time period, Defendants had a company-wide practice and/or policy of failing to pay Plaintiff and class members for actual hours worked, because these hours were not recorded, such as requiring Plaintiff and class members

1 to undergo mandatory security checks off-the-clock and waiting in line to clock in at an
2 inadequate number of timekeeping machines.

3 62. Moreover, Defendants maintained and implemented a company-wide policy of
4 requiring employees to travel to a medical facility on their own time and using their own
5 personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical
6 examinations. At all times, Defendants were in control of scheduling the date and time for the
7 testing and/or physical examinations, selecting the provider or facility where the testing and/or
8 physical examinations were to take place, and determining the scope of the testing and/or
9 physical examinations. For example, Defendants gave Plaintiff strict instructions to undergo
10 drug testing, and Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff
11 followed Defendants' instructions, spent time traveling to and from Defendants' designated
12 medical facility, Concentra Urgent Care in Colton, California, and spent over two (2) hours
13 waiting at the medical facility and undergoing the requisite drug testing. However, Defendants
14 did not compensate Plaintiff and class members for the time they spent traveling to and from
15 the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

16 63. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
17 and class members. To the extent that these off-the-clock hours did not qualify for overtime
18 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
19 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

20 64. As result, Defendants regularly failed to pay at least minimum wages to Plaintiff
21 and class members for all of the hours they worked in violation of California Labor Code
22 sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section
23 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount
24 equal to the wages unlawfully unpaid and interest thereon.

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1 **THIRD CAUSE OF ACTION**

2 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

3 **Violations**

4 **(Against all Defendants)**

5 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 66. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is not
11 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
12 and the employee. Under California law, first meal periods must start after no more than five
13 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

14 67. At all relevant times herein set forth, California Labor Code sections 226.7,
15 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
16 meal period mandated by an applicable order of the IWC.

17 68. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
18 the applicable IWC Wage Order also require employers to provide a second meal period of not
19 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
20 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
21 hours worked is no more than twelve (12) hours, the second meal period may be waived by
22 mutual consent of the employer and the employee only if the first meal period was not waived.

23 69. First, as stated, Defendants had, and continue to have, a loss prevention and/or
24 safety policy requiring employees to undergo mandatory security checks by a security guard
25 when entering or exiting the premises. As result of Defendants' policy, Plaintiff and class
26 members were required to undergo security screenings when entering or exiting the premises
27 before clocking in and/or after clocking out for their meal periods. For example, as stated above,
28 on days where Plaintiff brought a bag to work, she was required to spend up several minutes

1 per meal period waiting for a security guard to check her bag while off-the-clock. Thus,
2 Plaintiff's and class members' meal periods were shortened due to Defendants' mandatory
3 security checks.

4 70. Second, upon information and belief, Defendants had, and continue to have, a
5 company-wide policy and/or practice of understaffing their facilities. Defendants' continuous
6 understaffing, combined with the assignment of heavy workloads and order fulfillment
7 deadlines, resulted in a failure to provide Plaintiff and class members with adequate meal period
8 coverage. Defendants also had a practice of failing to adhere to a schedule for meal periods,
9 which further caused Plaintiff and class members to not be relieved of their duties for compliant
10 meal periods. As a result, Plaintiff and class members were forced to work in excess of five (5)
11 hours before taking a meal period and, at times, had their meal periods interrupted, and/or had
12 to forgo their meal periods altogether. For example, Plaintiff was required to take her meal
13 periods late, after the end of her fifth hour of work, in order to meet order fulfillment deadlines
14 and finish her assigned duties.

15 71. Additionally, because Defendants frowned upon employees accruing meal period
16 penalties, Defendants' management adjusted employee time records to reflect compliant meal
17 periods, regardless of whether they had actually received a compliant meal period. For example,
18 on several occasions where Plaintiff was required to take her meal period late, her supervisor
19 informed Plaintiff that she would be changing Plaintiff's timesheet to indicate a compliant meal
20 period.

21 72. Moreover, Defendants did not provide Plaintiff and class members with second
22 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
23 Plaintiff and class members did not sign valid meal period waivers on days that they were
24 entitled to meal periods and were not relieved of all duties.

25 73. At all times mentioned herein, Defendants knew or should have known that as a
26 result of their policies, Plaintiff and class members were not actually relieved of all duties to
27 take timely, uninterrupted meal periods. Defendants further knew or should have known that
28 they did not pay Plaintiff and class members meal period premiums when meal periods were

missed, interrupted, short, and/or late.

74. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for missed, interrupted, and/or late meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

75. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)

76. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

77. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class members' employment by Defendants.

78. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

79. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods

1 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
2 must “relinquish any control over how employees spend their break time, and relieve their
3 employees of all duties—including the obligation that an employee remain on call. A rest
4 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
5 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
6 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
7 additional hour of pay at their regular rates of pay for each work day that a required rest period
8 was not authorized and permitted.

9 80. Defendants regularly failed to authorize and permit Plaintiff and class members
10 to take a ten (10) minute rest period per each four (4) hour period worked or major fraction
11 thereof. As with meal periods, Defendants’ company-wide practices of understaffing and the
12 assignment of heavy workloads and order fulfillment deadlines prevented Plaintiff and class
13 members from being relieved of all duty to take their rest periods. Additionally, Defendants
14 failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest
15 period coverage, further led to Plaintiff and class members not being authorized and permitted
16 to take compliant rest periods.

17 81. Furthermore, Defendants maintained a company-wide on-premises rest period
18 policy, which mandated that Plaintiff and class members remain on Defendants’ premises
19 during their rest periods. Because Plaintiff and class members were restricted from leaving the
20 premises during rest periods, they were denied the ability to use their rest periods freely for their
21 own purposes, such as running personal errands or grabbing something to eat or drink. Thus,
22 Defendants effectively maintained control over Plaintiff and class members during rest periods.

23 82. As a result of Defendants’ practices and policies, Plaintiff and class members
24 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
25 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
26 Plaintiff would miss her rest periods to meet fulfillment deadlines and due to a lack of rest
27 period coverage. Further, Plaintiff did not receive a third rest period when she worked in excess
28 of 10 hours.

83. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them all rest period premiums due, in violation of California Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

84. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

**Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage
Statements and Failure to Maintain Accurate Payroll Records
(Against all Defendants)**

85. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

86. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

87. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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1 88. Because Defendants did not record the time Plaintiff and Subclass members spent
2 working off the clock, Defendants did not list the correct amount of gross wages and net wages
3 earned by Plaintiff and Subclass members in compliance with sections 226(a)(1) and 226(a)(5).
4 For the same reason, Defendants failed to accurately list the total number of hours worked by
5 Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list the applicable
6 hourly rates of pay in effect during the pay period and corresponding accurate number of work
7 hours worked at each hourly rate in violation of section 226(a)(9).

8 89. The wage statement deficiencies also include, without limitation, failing to list
9 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
10 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
11 which employees were paid; failing to list the name of the employee and only the last four digits
12 of his or her social security number or an employee identification number other than a social
13 security number; failing to list the name and address of the legal entity that is the employer,
14 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
15 the-clock.

16 90. California Labor Code section 1174(d) provides that “[e]very person employing
17 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
18 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
19 plants or establishments at which employees are employed, payroll records showing the hours
20 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
21 applicable piece rate paid to, employees employed at the respective plants or
22 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
23 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
24 members showing the daily hours they worked and the wages paid thereto as a result of failing
25 to record the off-the-clock hours that they worked.

26 91. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
28 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment

1 of any employees for longer hours than those fixed by the order or under conditions of labor
2 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
3 are required to keep accurate time records showing when the employee begins and ends each
4 work period and meal period. During the relevant time period, Defendants engaged in company-
5 wide practices and/or policies of failing to record actual hours worked (including falsifying time
6 records by recording that compliant meal periods were taken regardless of if or when meal
7 periods were actually taken), and thereby failed to keep accurate records of work period and
8 meal period start and stop times for Plaintiff and Subclass members, in violation of section
9 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members
10 with second 30-minute meal periods to which they were entitled, Defendants kept no records of
11 meal start and end times for second meal periods.

12 92. Plaintiff and Subclass members are entitled to recover from Defendants the
13 greater of their actual damages caused by Defendants’ failure to comply with California Labor
14 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
15 employee.

16 **SIXTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 18 **Termination** 19 **(Against all Defendants)**

20 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 94. This cause of action is dependent upon, and wholly derivative of, the overtime
23 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
24 Plaintiff and those class members no longer employed by Defendants upon their termination.

25 95. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 her employment, his or her wages shall become due and payable not later than seventy-two (72)

1 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
2 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
3 quitting.

4 96. Defendants willfully failed to pay Plaintiff and those class members who are no
5 longer employed by Defendants the earned and unpaid wages set forth above, including but not
6 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at
7 the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

8 97. Defendants' failure to pay Plaintiff and class members who are no longer
9 employed by Defendants their wages earned and unpaid at the time of discharge, or within
10 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
11 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
12 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
13 thirty (30) day maximum pursuant to California Labor Code section 203.

14 **SEVENTH CAUSE OF ACTION**

15 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 16 **Employment** 17 **(Against all Defendants)**

18 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 99. This cause of action is dependent upon, and wholly derivative of, the overtime
21 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
22 Plaintiff and class members during their employment.

23 100. At all times relevant herein set forth, Labor Code section 204 provides that all
24 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
25 days, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
27 the month during which the labor was performed.

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101. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

102. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

103. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

104. Defendants' failure to timely pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

105. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

106. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: "[w]hen tools

1 or equipment are required by the employer or are necessary to the performance of a job, such
2 tools and equipment shall be provided and maintained by the employer, except that an employee
3 whose wages are at least two (2) times the minimum wage provided herein may be required to
4 provide and maintain hand tools and equipment customarily required by the trade or craft.”

5 107. First, during the relevant time period, Defendants had a company-wide policy of
6 requiring Plaintiff and class members to utilize their own personal mobile devices, including,
7 but not limited to, cellular phones, and/or mobile data to carry out their job duties, but
8 Defendants failed to reimburse them for the costs of their work-related mobile device expenses.
9 Plaintiff and class members were required to use their personal mobile devices for work-related
10 tasks, including responding to calls or text messages from Defendants’ management. For
11 example, Plaintiff used her personal cellular phone to respond to phone calls from her
12 supervisors to report her location in the warehouse. Although Defendants required Plaintiff and
13 class members to utilize their personal mobile devices and/or mobile data to carry out their
14 work-related duties, Defendants failed to reimburse them for these costs.

15 108. Second, as stated, Defendants maintained and implemented a company-wide
16 policy of requiring employees to travel to a medical facility on their own time and using their
17 own personal vehicles or obtain alternate transportation to undergo mandatory drug testing
18 and/or physical examinations, but did not reimburse them for their travel expenses, including
19 mileage. At all times, Defendants were in control of scheduling the date and time for the testing
20 and/or physical examinations, selecting the provider or facility where the testing and/or physical
21 examinations were to take place, and determining the scope of the testing and/or physical
22 examinations. Defendants gave Plaintiff and class members strict instructions to obtain drug
23 testing and/or physical examinations, and Plaintiff and class members underwent the testing for
24 the sole benefit of Defendants.

25 109. For example, as described above, Plaintiff followed Defendants’ instructions,
26 traveled in her personal vehicle to and from her home and the medical facility designated by
27 Defendants, Concentra Urgent Care in Colton, California, and underwent the drug testing, but
28 was not reimbursed for her mileage to and from the medical facility. Although Defendants

1 required Plaintiff and class members to undergo drug testing and/or physical examinations,
2 Defendants failed to reimburse them for their travel expenses.

3 110. Defendants could have provided Plaintiff and class members with the actual tools
4 for use on the job, such as company mobile devices and company vehicles. Or, Defendants
5 could have reimbursed employees for the costs of their mobile device usage, and travel and
6 mileage expenses. Instead, Defendants passed these operating costs off onto Plaintiff and class
7 members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

8 111. Defendants' company-wide policy and/or practice of passing on their operating
9 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
10 have intentionally and willfully failed to reimburse Plaintiff and other class members for
11 necessary business-related expenses and costs.

12 112. Plaintiff and class members are entitled to recover from Defendants their
13 business-related expenses incurred during the course and scope of their employment, plus
14 interest.

15 **NINTH CAUSE OF ACTION**

16 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

17 **(Against all Defendants)**

18 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 114. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
22 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7,
23 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
24 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
25 those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

26 115. Defendants' conduct, as alleged herein, violates numerous sections of the
27 California Labor Code, including, but not limited to, the following:

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- 1 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
2 Wage Order for Defendants' failure to compensate Plaintiff and other
3 aggrieved employees with all required overtime pay, as alleged herein;
- 4 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
5 and the applicable IWC Wage Order for Defendants' failure to
6 compensate Plaintiff and other aggrieved employees with at least
7 minimum wages for all hours worked, as alleged herein;
- 8 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
10 and other aggrieved employees with meal periods, as alleged herein;
- 11 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
12 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
13 and other aggrieved employees to take rest periods, as alleged herein;
- 14 (e) Violation of Labor Code sections 226(a), 1174(d), and 1198, and the
15 applicable IWC Wage Order for failure to provide accurate and complete
16 wage statements to Plaintiff and other aggrieved employees, as alleged
17 herein;
- 18 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
19 IWC Wage Order for failure to maintain payroll records, as alleged
20 herein;
- 21 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
22 wages upon termination, as alleged herein;
- 23 (h) Violation of Labor Code section 204 for failure to pay all earned wages
24 during employment, as alleged herein;
- 25 (i) Violation of Labor Code section 222.5 for failure to pay costs of
26 mandatory drug testing and/or physical examinations, as set forth below;
27 and

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1 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
2 and other aggrieved employees for all business expenses necessarily
3 incurred, as alleged herein.

4 116. At all relevant times herein, California Labor Code section 222.5 requires
5 employers to pay for the costs an employee incurs for obtaining any required medical or physical
6 examination.

7 117. During the relevant time period, Defendants implemented, on a company-wide
8 basis, an employer-imposed requirement that Plaintiff and other aggrieved employees undergo
9 mandatory drug testing and/or physical examinations, but required them to do so at their own
10 expense. As stated, Defendants had a company-wide policy requiring that all employees,
11 including Plaintiff and other aggrieved employees, travel to a specified medical facility using their
12 own personal vehicles or obtain alternative transportation to undergo drug testing and/or physical
13 examinations. At all times, Defendants were in control of scheduling the date and time for the
14 testing and/or examinations, selecting the provider/facility where the testing and/or examinations
15 were to take place, and determining the scope of the testing and/or examinations.

16 118. For example, as stated, Plaintiff was instructed by Defendants to travel to
17 Concentra Urgent Care, a medical facility in Colton, California, and obtain drug testing, and
18 Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff followed Defendants'
19 instructions, traveled using her personal vehicle to and from her home and Defendants' designated
20 medical facility in Colton, California, and spent an additional two (2) hours at the medical facility
21 waiting for and undergoing the requisite drug testing.

22 119. However, Defendants did not compensate Plaintiff and other aggrieved employees
23 for the time they spent traveling to and from the medical facilities, for the time they spent
24 undergoing the drug testing and/or physical examinations, or reimburse them for the travel
25 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
26 practice of not paying for all costs Plaintiff and other aggrieved employees incurred obtaining
27 mandatory drug testing and/or physical examinations is in violation of California Labor Code
28 section 222.5.

120. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

121. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

122. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

123. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

124. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

125. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants’ policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,

1 and 1198, and the applicable IWC Wage Order, as alleged herein;

2 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
3 members in violation of California Labor Code sections 226.7, 512(a),
4 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

5 (d) Failing to authorize and permit Plaintiff and class members to take
6 uninterrupted rest periods in violation of California Labor Code sections
7 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
8 herein;

9 (e) Failing to provide Plaintiff and class members with accurate wage
10 statements and failing to maintain accurate payroll records in violation of
11 California Labor Code sections 226(a), 1174(d), and 1198, and the
12 applicable IWC Wage Order, as alleged herein;

13 (f) Failing to timely pay all earned wages to Plaintiff and class members in
14 violation of California Labor Code section 204, as alleged herein;

15 (g) Failing to pay the costs of mandatory drug testing and/or physical
16 examinations in violation of California Labor Code section 222.5, as set
17 forth below; and

18 (h) Failing to reimburse Plaintiff and class members for all business expenses
19 necessarily incurred in violation of California Labor Code sections 2802,
20 as alleged herein.

21 126. At all relevant times herein, California Labor Code section 222.5 requires
22 employers to pay for the costs an employee incurs for obtaining any medical or physical
23 examination taken pursuant to any law or regulation.

24 127. During the relevant time period, Defendants implemented, on a company-wide
25 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory
26 drug testing and/or physical examinations, but required them to do so at their own expense. As
27 stated, Defendants had a company-wide policy requiring that all employees, including Plaintiff
28 and class members, travel to a specified medical facility using their own personal vehicles or

1 obtain alternate transportation to undergo drug testing and/or physical examinations. At all
2 times, Defendants were in control of scheduling the date and time for the drug testing and/or
3 physical examinations, selecting the provider/facility where the drug testing and/or physical
4 examinations were to take place, and determining the scope of the drug testing and/or physical
5 examinations.

6 128. For example, as stated, Plaintiff was instructed by Defendants to travel to
7 Concentra Urgent Care, a medical facility in Colton, California, and obtain drug testing, and
8 Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff followed
9 Defendants' instructions, traveled using her personal vehicle to and from her home and
10 Defendants' designated medical facility in Colton, California, and spent an additional two (2)
11 hours at the medical facility waiting for and undergoing the requisite drug testing.

12 129. However, Defendants did not compensate Plaintiff and class members for the
13 time they spent traveling to and from the medical facilities, for the time they spent undergoing
14 the drug testing and/or physical examinations, or reimburse them for the travel expenses they
15 incurred getting to and from the medical facilities. Defendants' policy and/or practice of not
16 paying for all costs Plaintiff and class members incurred obtaining mandatory drug tests and/or
17 physical examinations violates California Labor Code section 222.5.

18 130. As a result of the violations of California law herein described, Defendants
19 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
20 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

21 131. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
22 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
26 section 1021.5 and other applicable laws; and an award of costs.

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1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unfair Business Practices**

4 **(Against all Defendants)**

5 132. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 133. Defendants are “persons” as defined by California Business & Professions Code
8 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
9 associations.

10 134. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
11 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
12 fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to
13 enforce important rights affecting the public interest within the meaning of Code of Civil
14 Procedure section 1021.5.

15 135. Defendants’ activities, namely Defendants’ company-wide practice and/or policy
16 of not paying Plaintiff and class members all meal and rest period premiums due to them under
17 California Labor Code section 226.7, deprived Plaintiff and class members of the compensation
18 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
19 provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate
20 employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238
21 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
22 Plaintiff and class members as part of their employment with Defendants, and thus Defendants’
23 practice and/or policy of denying these statutory benefits constitutes an unfair business practice
24 in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

25 136. A violation of California Business & Professions Code sections 17200, *et seq.*
26 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
27 practices have violated the spirit of California’s meal and rest period laws and constitute acts
28 against the public policy behind these laws.

137. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by California Labor Code section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by California Labor Code section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;
3. That Plaintiff be appointed as the representative of the Class and Subclass;
4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

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20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

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1 31. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 32. For injunctive relief pursuant to California Labor Code section 226(h);

4 33. For statutory penalties pursuant to California Labor Code section 226(e);

5 34. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

7 35. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Sixth Cause of Action**

10 36. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
12 and/or meal and rest period premiums owed at the time of termination of the employment of
13 Plaintiff and other terminated class members;

14 37. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 38. For waiting time penalties according to proof pursuant to California Labor Code
17 section 203 for all employees who have left Defendants' employ;

18 39. For pre-judgment interest on any unpaid wages from the date such amounts were
19 due, or as otherwise provided by law;

20 40. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 41. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Seventh Cause of Action**

25 42. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
27 wages, minimum wages, and/or meal and rest period premiums during their employment;

28 ///

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and

1 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
2 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
3 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
4 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
5 earned wages upon termination); 204 (by failing to timely pay all earned wages during
6 employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or drug
7 testing); and 2802 (by failing to reimburse business expenses);

8 55. For civil penalties pursuant to the California Labor Code, including sections 210,
9 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
10 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
11 1198, and 2802;

12 56. For attorneys' fees and costs pursuant to California Labor Code section
13 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
14 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
15 1194, 1197, 1197.1, 1198, and 2802;

16 57. For pre-judgment and post-judgment interest as provided by law; and

17 58. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Tenth Cause of Action**

20 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
21 to provide Plaintiff and class members all overtime wages due to them, failing to provide
22 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
23 class members all meal periods, failing to authorize and permit Plaintiff and class members to
24 take all rest periods, failing to provide Plaintiff and class members accurate and complete wage
25 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
26 to timely pay Plaintiff and class members all earned wages during employment, failing to pay
27 the costs of mandatory drug testing and/or physical examinations, and failing to reimburse
28 Plaintiff and class members for business-related expenses, constitutes an unlawful business

1 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

2 60. For restitution of unpaid wages to Plaintiff and all class members and
3 prejudgment interest from the day such amounts were due and payable;

4 61. For the appointment of a receiver to receive, manage and distribute any and all
5 funds disgorged from Defendants and determined to have been wrongfully acquired by
6 Defendants as a result of violations of California Business & Professions Code sections 17200,
7 *et seq.*;

8 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Code of Civil Procedure section 1021.5; and

10 63. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Eleventh Cause of Action**

13 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
14 Plaintiff and class members the statutory benefits guaranteed under California Labor Code
15 section 226.7 constitutes an unfair business practice in violation of California Business and
16 Professions Code sections 17200, *et seq.*;

17 65. For restitution of the statutory benefits under California Labor Code section
18 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day
19 such amounts were due and payable;

20 66. For the appointment of a receiver to receive, manage and distribute any and all
21 funds disgorged from Defendants and determined to have been wrongfully acquired by
22 Defendants as a result of violations of California Business & Professions Code sections 17200,
23 *et seq.*;

24 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Code of Civil Procedure section 1021.5;

26 68. For pre-judgment and post-judgment interest as provided by law; and

27 69. For such other and further relief as the Court may deem equitable and
28 appropriate.

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Dated: July 20, 2022

Respectfully submitted,

CAPSTONE LAW APC

By: 
Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Plaintiff Angelica Aguilar

EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

April 8, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Angelica Aguilar v. Distribution Alternatives, Inc.*

Dear PAGA Administrator:

This office represents Angelica Aguilar in connection with her claims under the California Labor Code. Ms. Aguilar was an employee of DISTRIBUTION ALTERNATIVES, INC. ("DA").

The employer may be contacted directly at the address below:

DISTRIBUTION ALTERNATIVES, INC.
6870 21ST AVE SOUTH
LINO LAKES MN 55038

Ms. Aguilar intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Aguilar seeks relief on behalf of herself, the State of California, and other persons who are or were employed by DA as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DA employed Ms. Aguilar as an hourly paid, non-exempt employee from approximately October 2021 to January 2022. Ms. Aguilar worked for DA as a Client Specialist at its facility in Bloomington, California. During her employment, Ms. Aguilar typically worked eight (8) or more hours per day, five (5) days per week, from 6:00 a.m. to 2:30 p.m. Ms. Aguilar was compensated approximately \$19.00 per hour. Her job duties included, without limitation, printing shipping labels, preparing shipping packets, and assisting with order management and tracking.

DA committed one or more of the following Labor Code violations against Ms. Aguilar, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

DA’s Company-Wide and Uniform Payroll and HR Practices

DISTRIBUTION ALTERNATIVES, INC. is a Minnesota corporation and a full-service third-party logistics company supplying warehousing and fulfillment services to manufacturers, marketers, and retailers, with more than 2.5 million square feet of operations in Minnesota and Southern California. Upon information and belief, DA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lino Lakes, Minnesota, for all non-exempt, hourly paid employees working for DA in California, including Ms. Aguilar and other aggrieved employees. At all relevant times, DA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Aguilar and other aggrieved employees, regardless of its location or position.

Upon information and belief, DA maintains a centralized Payroll department at its corporate headquarters in Lino Lakes, Minnesota, which processes payroll for all non-exempt, hourly paid employees working for DA in California, including Ms. Aguilar and other aggrieved employees. Further, DA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Aguilar and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, DA utilized the same methods and formulas when calculating wages due to Ms. Aguilar and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

DA willfully failed to pay all overtime wages owed to Ms. Aguilar and other aggrieved employees. During the relevant time period, Ms. Aguilar and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve

¹ These facts, theories, and claims are based on Ms. Aguilar’s experience and counsel’s review of those records currently available relating to Ms. Aguilar’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Aguilar reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

(12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, DA, on a company-wide basis, had a policy of requiring employees to undergo mandatory security checks when entering or exiting the premises, either for loss prevention or safety purposes. As a result of DA's policy, Ms. Aguilar and other aggrieved employees were required to undergo security screenings when entering or exiting the premises, before clocking in at the beginning of a shift and when returning from a meal period, or after clocking out at the end of a shift and when leaving for their meal period. For example, on days when Ms. Aguilar brought a bag to work, she was required to wait several minutes off-the-clock for a security guard to perform a security check before she was permitted to clock in at the start of her shift and at the end of her meal period. Similarly, before Ms. Aguilar was permitted to leave the premises for her meal period and at the end of her shift, Ms. Aguilar was required to wait several minutes off-the-clock for a security guard to check her bag. Although DA's requirement that Ms. Aguilar and other aggrieved employees undergo security checks was mandatory, DA did not compensate them for the time they spent off-the-clock before and after shifts or during unpaid meal periods, waiting in line and undergoing these checks while under DA's control.

Further, during the relevant time period, DA only provided Ms. Aguilar and other aggrieved employees with one (1) access point to its timekeeping system, thus exacerbating the amount of time Ms. Aguilar and other aggrieved employees waited in line off-the-clock and under DA's control, time for which they were not paid. For example, Ms. Aguilar would report to work at the start of her scheduled shift, but would be required to wait at least several minutes in a long line of employees from all departments to clock in (after already having waited to undergo the mandatory security searches).

Second, upon information and belief, DA had, and continues to have, a company-wide policy and/or practice of understaffing its facilities. DA's continuous understaffing, combined with the assignment of heavy workloads and order fulfillment deadlines, resulted in a failure to provide Ms. Aguilar and/or other aggrieved employees with adequate meal period coverage. DA also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Aguilar and/or other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. Moreover, because DA frowned upon employees accruing meal period penalties, DA's management adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that DA would otherwise owe. Consequently, other aggrieved employees performed work during meal periods for which they were not paid.

Furthermore, DA's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, DA did not record all hours worked during meal periods, and other aggrieved employees performed work during meal periods for which they were not paid.

DA knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Aguilar and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid.

Because Ms. Aguilar and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Aguilar and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, DA did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, DA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DA failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, DA failed to pay all overtime wages by paying a lower overtime rate than required.

DA's failure to pay Ms. Aguilar and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Aguilar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 9-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11090(2)(H) (defining "Hours Worked").

As set forth above, during the relevant time period, DA had a company-wide practice and/or policy of failing to pay Ms. Aguilar and other aggrieved employees for actual hours worked, because these hours were not recorded, such as requiring Ms. Aguilar and other aggrieved employees to undergo mandatory security checks off-the-clock and waiting in line to clock-in at an inadequate number of timekeeping machines.

Additionally, due to DA's policies and/or practices of understaffing while assigning heavy workloads and failing to adhere to a schedule for meal periods, other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Further, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, DA systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods by adjusting employee time records to reflect compliant meal periods. Also, as set forth above, during the relevant time period, DA systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods, because the timekeeping system locked out other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, DA systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Moreover, DA maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, DA was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, DA gave Ms. Aguilar strict instructions to undergo drug testing, and Ms. Aguilar underwent the testing for the sole benefit of DA. Ms. Aguilar followed DA's instructions, spent time traveling to and from DA's designated medical facility, Concentra Urgent Care in Colton, California, and spent over two (2) hours waiting at the medical facility and undergoing the requisite drug testing. However, DA did not compensate Ms. Aguilar and other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, DA did not pay at least minimum wages for all hours worked by Ms. Aguilar and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, DA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, DA regularly failed to pay at least minimum wages to Ms. Aguilar and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Aguilar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, DA had, and continues to have, a loss prevention and/or safety policy requiring employees to undergo mandatory security checks by a security guard when entering or exiting the premises. As result of DA's policy, Ms. Aguilar and other aggrieved employees were required to undergo security screenings when entering or exiting the premises before clocking in and/or after clocking out for their meal periods. For example, as stated above, on days where Ms. Aguilar brought a bag to work, she was required to spend up several minutes per meal period waiting for a

security guard to check her bag while off-the-clock. Thus, Ms. Aguilar's and other aggrieved employees' meal periods were shortened due to DA's mandatory security checks.

Second, upon information and belief, DA had, and continues to have, a company-wide policy and/or practice of understaffing its facilities. DA's continuous understaffing, combined with the assignment of heavy workloads and order fulfillment deadlines, resulted in a failure to provide Ms. Aguilar and other aggrieved employees with adequate meal period coverage. DA also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Aguilar and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Ms. Aguilar and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Ms. Aguilar was required to take her meal period late, after the end of her fifth hour of work, in order to meet order fulfillment deadlines and finish her assigned duties.

Third, because DA frowned upon employees accruing meal period penalties, DA's management adjusted employee time records to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period. For example, on several occasions where Ms. Aguilar was required to take her meal period late, her supervisor informed Ms. Aguilar that she would be changing Ms. Aguilar's timesheet to indicate a compliant meal period. Also, DA's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Moreover, DA did not provide Ms. Aguilar and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Aguilar and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

DA knew or should have known that as a result of its company-wide policies and/or practices, Ms. Aguilar and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DA further knew or should have known that it did not pay Ms. Aguilar and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted.

Furthermore, DA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Aguilar and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that DA did pay other aggrieved employees premium pay for missed, late, interrupted, and shortened meal periods, DA did not pay other aggrieved employees at the correct rate of pay for premiums because DA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Aguilar and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

DA regularly failed to authorize and permit Ms. Aguilar and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, DA's company-wide practices of understaffing and the assignment of heavy workloads and order fulfillment deadlines prevented Ms. Aguilar and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, DA failed to schedule rest periods, which, coupled with DA's failure to provide adequate rest period coverage, further led to Ms. Aguilar and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, DA maintained a company-wide on-premises rest period policy, which mandated that Ms. Aguilar and other aggrieved employees remain on DA's premises during their rest periods. Because Ms. Aguilar and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands or grabbing something to eat or drink. Thus, DA effectively maintained control over Ms. Aguilar and other aggrieved employees during rest periods.

As a result of DA's practices and policies, Ms. Aguilar and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Aguilar would miss her rest periods to meet fulfillment deadlines and due to a lack of rest period coverage. Further, Ms. Aguilar did not receive a third rest period when she worked in excess of 10 hours.

DA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Aguilar and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DA did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DA did not pay other aggrieved employees at the correct rate of pay for premiums because DA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Aguilar and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DA has not provided Ms. Aguilar and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, DA has knowingly and intentionally provided Ms. Aguilar and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DA issued uniform wage statements to Ms. Aguilar and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, DA violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because DA did not record the time Ms. Aguilar and other aggrieved employees spent working off-the-clock and/or deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), DA did not list the correct amount of gross wages and net wages earned by Ms. Aguilar and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DA failed to accurately list the total number of hours worked by Ms. Aguilar and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because DA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, DA did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). DA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees

were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), DA willfully failed to maintain accurate payroll records for Ms. Aguilar and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DA engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Aguilar and other aggrieved employees in violation of section 1198. Furthermore, in light of DA’s failure to provide Ms. Aguilar and other aggrieved employees with second 30-minute meal periods to which they were entitled, DA kept no records of meal start and end times for second meal periods.

Because DA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Aguilar and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Aguilar and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Aguilar and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon

termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, DA failed to pay Ms. Aguilar and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Ms. Aguilar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

DA willfully failed to pay Ms. Aguilar and other aggrieved employees who are no longer employed by DA all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving DA's employ.

Ms. Aguilar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, DA implemented, on a company-wide basis, an employer-imposed requirement that Ms. Aguilar and other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, DA had a company-wide policy requiring that all employees, including Ms. Aguilar and other aggrieved employees, travel to a specified medical facility using their own personal vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations. At all times, DA was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug testing and/or physical examinations.

For example, as stated, Ms. Aguilar was instructed by DA to travel to Concentra Urgent Care, a medical facility in Colton, California, and obtain drug testing, and Ms. Aguilar underwent the testing for the sole benefit of DA. Ms. Aguilar followed DA's instructions, traveled using her personal vehicle to and from her home and DA's designated medical facility in Colton, California, and spent an additional two (2) hours at the medical facility waiting for and undergoing the requisite drug testing.

However, DA did not compensate Ms. Aguilar and other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. DA's policy and/or practice of not paying for all costs Ms. Aguilar and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Ms. Aguilar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: "[w]hen 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 the 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."

First, during the relevant time period, DA had a company-wide policy of requiring Ms. Aguilar and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but DA failed to reimburse them for the costs of their work-related mobile device expenses. Ms. Aguilar and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from DA's management. For example, Ms. Aguilar used her personal cellular phone to respond to phone calls from her supervisors to report her location in the warehouse. Although DA required Ms. Aguilar and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related duties, DA failed to reimburse them for these costs.

Second, as stated, DA maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or obtain alternate transportation to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, DA was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. DA gave Ms. Aguilar and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Ms. Aguilar and other aggrieved employees underwent the testing for the sole benefit of DA.

For example, as described above, Ms. Aguilar followed DA's instructions, traveled in her personal vehicle to and from her home and the medical facility designated by DA, Concentra Urgent Care in Colton, California, and underwent the drug testing, but was not reimbursed for her mileage to and from the medical facility. Although DA required Ms. Aguilar and other aggrieved employees to undergo drug testing and/or physical examinations, DA failed to reimburse them for their travel expenses.

DA could have provided Ms. Aguilar and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles. Or, DA could have reimbursed employees for the costs of their mobile device usage, and travel and mileage expenses. Instead, DA passed these operating costs off onto Ms. Aguilar and other aggrieved employees. At all relevant times, Ms. Aguilar did not earn at least two (2) times the minimum wage.

Thus, DA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Aguilar and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." DA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Aguilar's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Aguilar seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Aguilar, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against DA for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Aguilar seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

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I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **July 20, 2022**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Leila Nourani (SBN 16071)
Leila.Nourani@Jacksonlewis.com
Martin P. Vigodnier (SBN 311834)
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Attorneys for Defendant
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- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.
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- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 20, 2022**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name


Signature