

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Melissa A. Huether, Esq. (SBN 316604)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, CA 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lclawfirm.com
vgranberry@lclawfirm.com
mhuether@lclawfirm.com
wht3@lclawfirm.com

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 10/31/2022
By /s/ Maria Coronel
Deputy Clerk

Attorneys for Plaintiff KIMBERLY A. MCCRUM,
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

KIMBERLY A. MCCRUM, on behalf of herself
and other aggrieved employees,

Plaintiff,

vs.

BLUEPEARL VET, LLC; BLUEPEARL
CALIFORNIA, INC.; MARS
INCORPORATED; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 22-CIV-04524

PAGA ACTION

**PLAINTIFF KIMBERLY A.
MCCRUM'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff KIMBERLY A. MCCRUM ("Plaintiff"), who alleges and
complains against Defendants BLUEPEARL VET, LLC; BLUEPEARL CALIFORNIA, INC.;
MARS INCORPORATED; and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all

1 hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure
2 to pay accrued and vested vacation/PTO wages upon separation of employment; failure to
3 authorize or permit all legally required and/or compliant meal periods or pay meal period
4 premium wages; failure to authorize or permit all legally required and/or compliant rest periods or
5 pay rest period premium wages; indemnification for all necessary expenditures or losses incurred
6 by employees in direct consequence of discharging their duties; statutory penalties for failure to
7 timely pay earned wages during employment; statutory penalties for failure to provide accurate
8 wage statements; statutory waiting time penalties in the form of continuation wages for failure to
9 timely pay employees all wages due upon separation of employment. Plaintiff seeks on a
10 representative basis, following notice to the Labor and Workforce Development Agency, civil
11 penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought
12 on behalf of Plaintiff, the State of California, and others aggrieved.

13 **II. JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
15 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
16 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
17 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
18 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
19 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
20 aggrieved California-based hourly non-exempt employees occurred in locations throughout
21 California, including but not limited to San Mateo County, at 2201 Junipero Serra Blvd., Daly
22 City, California 94014.

23 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
24 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
25 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
26 tolled from April 6, 2020, until October 1, 2020.

27 **III. PARTIES**

28 1. Plaintiff brings this action as a representative of the Labor and Workforce

1 Development Agency on behalf of herself and other current and former employees subject to
2 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
3 filed include current, former and/or future employees of Defendants who work, worked, or will
4 work for Defendants as direct employees as well as temporary employees employed through temp
5 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
6 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
7 employed by Defendants in an hourly position at Defendants' location in San Mateo from in or
8 around March 2021 until on or about February 13, 2022.

9 2. Plaintiff is informed and believes and thereon alleges that Defendant BLUEPEARL
10 VET, LLC is authorized to do business within the State of California and is doing business in the
11 State of California and/or that Defendants DOES 1-25 are, and at all times relevant hereto were
12 persons acting on behalf of Defendant BLUEPEARL VET, LLC in the establishment of, or
13 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
14 BLUEPEARL VET, LLC operates in San Mateo County and employed Plaintiff and putative class
15 members in San Mateo County, including but not limited to, at 2201 Junipero Serra Blvd., Daly
16 City, California 94014.

17 3. Plaintiff is informed and believes and thereon alleges that Defendant BLUEPEARL
18 CALIFORNIA, INC. is authorized to do business within the State of California and is doing
19 business in the State of California and/or that Defendants DOES 26-50 are, and at all times
20 relevant hereto were persons acting on behalf of Defendant BLUEPEARL CALIFORNIA, INC. in
21 the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
22 policies. Defendant BLUEPEARL CALIFORNIA, INC. operates in San Mateo County and
23 employed Plaintiff and putative class members in San Mateo County, including but not limited to,
24 at 2201 Junipero Serra Blvd., Daly City, California 94014.

25 4. Plaintiff is informed and believes and thereon alleges that Defendant MARS
26 INCORPORATED is authorized to do business within the State of California and is doing
27 business in the State of California and/or that Defendants DOES 51-75 are, and at all times
28 relevant hereto were persons acting on behalf of Defendant MARS INCORPORATED in the

1 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
2 Defendant MARS INCORPORATED operates in San Mateo County and employed Plaintiff and
3 putative class members in San Mateo County, including but not limited to, at 2201 Junipero Serra
4 Blvd., Daly City, California 94014.

5 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
6 through 50 are corporations, or are other business entities or organizations of a nature unknown to
7 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
8 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
9 working conditions of employment of Plaintiff and aggrieved employees.

10 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
11 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
12 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
13 supervisor, independent contractor and/or employee of each defendant who violated or caused to
14 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
15 the Industrial Welfare Commission's wage orders regulating hours and days of work.

16 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
17 sues said defendants by said fictitious names, and will amend this complaint when the true names
18 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
19 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
20 named defendants is in some manner responsible for the events and allegations set forth in this
21 complaint.

22 8. Plaintiff makes the allegations in this complaint without any admission that, as to
23 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
24 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

25 **FIRST CAUSE OF ACTION**

26 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

27 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

28 **(Against all Defendants by Plaintiff)**

9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

10. During the period beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and Sections 14 and 15 of the applicable Wage Orders.

11. Specifically, Defendants have committed the following violations of California Labor Code:

12. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

13. Labor Code sections 1194 and 1197 require an employer to compensate employees for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

14. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

(a) During COVID-19, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees required to self-administer temperature checks prior to being permitted to clock-in for their start shift; and

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who Defendant required to wear scrubs as part of their employment to perform off-the-clock maintenance of the scrubs such as washing and ironing them.

1 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
2 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
3 control without paying wages for that time. This resulted in Plaintiff and other current and former
4 aggrieved California-based hourly non-exempt employees working time for which they were not
5 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
6 Wage Order.

7 16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
8 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
9 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
10 which includes all time that an employee is under control of the employer and all time the
11 employee is suffered and permitted to work. This includes the time an employee spends, either
12 directly or indirectly, performing services that inure to the benefit of the employer.'

13 17. Labor Code sections 510 and 1194 require an employer to compensate employees a
14 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
15 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

16 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
17 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
18 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
19 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
20 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee.

21 Labor Code section 510.

22 18. In this case, Defendants failed to pay Plaintiff and other current and former
23 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
24 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

25 (a) During COVID-19, Plaintiff and other current and former aggrieved California-
26 based hourly non-exempt employees required to self-administer temperature checks prior to being
27 permitted to clock-in for their start shift; and

28 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly

1 non-exempt employees who Defendant required to wear scrubs as part of their employment to
2 perform off-the-clock maintenance of the scrubs such as washing and ironing them.

3 19. Overtime is based upon an employee's regular rate of pay. "The regular rate at
4 which an employee is employed shall be deemed to include all remuneration for employment paid
5 to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement
6 Policies and Interpretations Manual, Section 49.1.2.

7 In this case, Plaintiff alleges that when she and other current and former aggrieved California-
8 based hourly non-exempt employees earned overtime wages, Defendants failed to pay them
9 overtime wages at the proper overtime rate of pay due to Defendants' failure to include all
10 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
11 policy, practice, and/or procedure of failing to include all remuneration such as differential shift
12 pay and differential weekend night pay, for example, when calculating Plaintiff and other current
13 and former aggrieved California-based hourly non-exempt employees regular rate of pay for the
14 purpose of paying overtime.

15 20. The foregoing policies, practices, and/or procedures resulted in time during each
16 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
17 employees were under the control of Defendants but were not compensated. To the extent that the
18 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
19 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
20 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
21 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
22 sections 510 and 1194 and the applicable Wage Order.

23 21. **Failure to pay wages to hourly non-exempt employees for workdays that**
24 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
25 current and former aggrieved California-based hourly non-exempt employees regularly worked
26 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

27 22. California law requires an employer to authorize or permit an employee an
28 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of

1 all duties and the employer relinquishes control over the employee's activities prior to the
2 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker*
3 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
4 employee for a work period of more than ten (10) hours per day without providing the employee
5 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
6 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
7 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
8 period is only permitted when: (1) the nature of the work prevents an employee from being
9 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

10 23. If an employer fails to provide an employee a meal period in accordance with the
11 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
12 for each workday that a legally required and compliant meal period was not provided. Labor Code
13 section 226.7; Wage Order 4 at §11.

14 24. In this case, Defendants failed to authorize or permit legally required and compliant
15 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
16 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
17 limited to:

18 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
19 hourly non-exempt employees a second uninterrupted duty-free meal period of no less than thirty
20 (30) minutes for each workday that Plaintiff and other current and former aggrieved California-
21 based hourly non-exempt employees work shifts over ten (10) hours.

22 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
23 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
24 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
25 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
26 employees did not receive legally required and compliant meal periods, in violation of Labor Code
27 section 226.7.

28 26. Finally, on occasions when Defendants paid Plaintiff and similarly situated

employees a “premium” wage for late, missed, short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as differential shift pay and differential weekend night pay, for example, when calculating Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regular rate of compensation for the purpose of paying meal period premium wages.

27. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays during which Defendants did not provide them with meal periods in compliance with California law.

28. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

29. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code section 226.7; Wage Order 4 at §12. Under California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage Order 4 at §12. Additionally, the rest period requirement “obligates employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

30. If the employer fails to authorize or permit a required rest period, the employer

1 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
2 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
3 Wage Order 4 at § 12.

4 31. In this case, Defendants failed to authorize or permit all legally required and
5 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
6 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
7 limited to:

8 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
9 hourly non-exempt employees a third uninterrupted duty-free rest period of no less than ten (10)
10 net minutes on each workday that Plaintiff and other current and former aggrieved California-
11 based hourly non-exempt employees work shifts over ten (10) hours.

12 32. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
13 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
14 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
15 workday they did not receive legally required and compliant rest periods, in violation of Labor
16 Code section 226.7.

17 33. Finally, on occasions when Defendants did pay Plaintiff and other current and
18 former aggrieved California-based hourly non-exempt employees a "premium" wage for late,
19 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
20 one (1) additional hour of pay at Plaintiff and other current and former aggrieved California-based
21 hourly non-exempt employees regular rate of compensation. Specifically, Defendants maintained a
22 policy, practice, and/or procedure of failing to include all remuneration such as differential shift
23 pay and differential weekend night pay, for example, when calculating Plaintiff and other current
24 and former aggrieved California-based hourly non-exempt employees regular rate of
25 compensation for the purpose of paying rest period premiums.

26 34. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
27 and other current and former aggrieved California-based hourly non-exempt employees not
28 receiving wages to compensate them for workdays in which Defendants did not provide them with

1 rest periods in compliance with California law.

2 35. **Failure to pay accrued and vested vacation wages upon separation:** Defendants
3 had a policy and/or procedure where Plaintiff and other current and former aggrieved California-
4 based hourly non-exempt employees accrued paid vacation time and/or personal time off (“PTO”).

5 36. Labor Code section 227.3 states in relevant part “...whenever a contract of
6 employment or employer policy provides for paid vacations, and an employee is terminated
7 without having taken off his vested vacation time, all vested vacation shall be paid to him as
8 wages at his final rate in accordance with such contract of employment or employer policy
9 respecting eligibility or time served....” Given this, vacation/PTO wages are deferred wages that
10 vest once accrued and an employer must pay its employees all unused vested vacation/PTO at the
11 time of termination at the employees’ final rate of pay.

12 37. Defendants had a policy in which Plaintiff and other current and former aggrieved
13 California-based hourly non-exempt employees accrued vacation/PTO wages.

14 38. In this case, Plaintiff and other current and former aggrieved California-based
15 hourly non-exempt employees regularly worked enough hours to accrue vested vacation/PTO
16 wages. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in
17 their failure to pay accrued and vested vacation/PTO wages upon separation of employment.

18 39. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
19 **Employment:** California law requires that every employer must indemnify its employees for all
20 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
21 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
22 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
23 2802.)

24 40. Defendants have violated Labor Code Section 2802 by failing to indemnify
25 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees’
26 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
27 employed policies, practices, and/or procedures including but not limited to, maintaining their
28 scrubs outside of work- for work-related purposes - without reimbursing Plaintiff and other current

1 and former aggrieved California-based hourly non-exempt employees for such use.

2 41. Moreover, Defendants employed policies and procedures which ensured Plaintiff
3 and aggrieved employees would not receive indemnification for their employment related
4 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
5 indemnification in compliance with California law.

6 42. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
7 employment related expenses, including but not limited to costs related to use of their personal
8 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

9 43. **Failure to timely pay earned wages during employment:** In California, wages
10 must be paid at least twice during each calendar month on days designated in advance by the
11 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
12 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
13 16th and the 26th day of that month and wages earned between the 16th and the last day,
14 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
15 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
16 paid within seven (7) calendar days following the close of the payroll period in which wages were
17 earned. Labor Code section 204(d).

18 44. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
19 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
20 exempt employees' earned wages (including minimum wages, overtime wages, meal period
21 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
22 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
23 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
24 their earned wages within the applicable time frames outlined in Labor Code section 204.

25 45. **Failure to provide complete and accurate wage statements:** Labor Code section
26 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
27 employee his or her wages, the employer must "furnish each of his or her employees ... an
28 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the

1 employee, except for any employee whose compensation is solely based on a salary and who is
2 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
3 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
4 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
5 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
6 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
7 name of the employee and his or her social security number, (8) the name and address of the legal
8 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
9 the corresponding number of hours worked at each hourly rate by the employee.”

10 46. Defendants committed direct violations of Labor Code section 226, through their
11 policies, practices, and/or procedures, including, but not limited to failing to provide Plaintiff’s
12 and other current and former aggrieved California-based hourly non-exempt employees’ accurate
13 itemized wage statements showing: the total number hours worked.

14 47. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
15 and other current and former aggrieved California-based hourly non-exempt employees all wages
16 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
17 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
18 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
19 section 226.

20 48. **Failure to pay employees all wages due at time of termination/resignation:** An
21 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
22 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
23 hours of resignation (Labor Code section 202).

24 49. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
25 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
26 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
27 and/or rest period premium wages), Defendants failed to pay those employees timely after each
28 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

1 50. Defendants' violations of Wage Order 4 constituted violations of Labor Code
2 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

3 51. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
4 employee, on behalf of himself or herself and other current or former employees, to bring a civil
5 action to recover civil penalties against all Defendants pursuant to the procedures specified in
6 Labor Code section 2699.3.

7 52. Plaintiff has complied with the procedures for bringing suit specified in Labor
8 Code section 2699.3. On June 30, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and
9 provided notice to Defendants by certified mail which provided notice of the specific provisions of
10 the Labor Code alleged to have been violated, including the facts and theories to support the
11 violations alleged.

12 53. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
13 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
14 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
15 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
16 to investigate Plaintiff's claims.

17 54. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
18 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
19 512, 1194, 1197, 1198, and 2802, beginning one (1) year preceding Plaintiff sending the initial
20 PAGA Claim Notice to the LWDA to the present, in the following amounts:

21 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512,
22 and 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
23 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
24 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

25 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
26 for each employee for each pay period for the initial violation, and for each subsequent violation,
27 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
28 established by Labor Code section 226.3].

1 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
2 employee for each pay period for the initial violation, and for each subsequent violation, one
3 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
4 established by Labor Code section 558] and any unpaid wages.

5 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
6 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
7 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
8 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

9 55. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
10 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER**
13 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

14 **ON THE FIRST CAUSE OF ACTION:**

15 1. That Defendants be found to have violated the provisions of the Labor Code and
16 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

17 2. For any and all legally applicable penalties during the relevant statute of limitations
18 subject to any permissible tolling, including but not limited to those recoverable under the
19 California Labor Code, including but not limited to section 2699(f);

20 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
21 under California Labor Code section 2699(g); and

22 4. For such and other further relief, in law and/or equity, as the Court deems just or
23 appropriate

24 //

25 //

26 //

27 //

28 //

1 Dated: October 28, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

2
3 By: *Vincent C. Granberry*
4 Joseph Lavi, Esq.
5 Vincent C. Granberry, Esq.
6 Melissa A. Huether, Esq.
7 Attorneys for Plaintiff KIMBERLY A.
8 MCCRUM,
9 on behalf of herself and current and former
10 aggrieved employees
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28