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June 1, 2026

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(***Via Email***)

LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(***Via Online Submission***)

Re: ***Christopher Villa, et al. v. Ensign Southland LLC, et al.***
Amended Notice of Labor Code Violations and PAGA Penalties
LWDA Case No.: LWDA-CM-896901-22

To Whom It May Concern:

This letter amends Christopher Villa's LWDA notice letter sent on July 21, 2022, including, but not limited to, by adding additional named Employees, additional Employers, and additional theories of liability.

Please be advised that my office has been retained by Christopher Villa, Crystal Applon, Jenny Brown, Angie Duran, Vesenia Aguilar Hernandez, Dayana Lobera-Rojas, Darnell Mendros, Stephanie Thomas, Victor Spencer Wiley, and Simone Woods ("Employees") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against the following entities ("Employers"):

1. Ensign Southland, LLC
2. Southland Management LLC dba Southland Care Center
3. Ensign Services, Inc.
4. The Ensign Group, Inc.
5. Midnight Healthcare, Inc. dba Alamitos Belmont Health and Rehabilitation;
6. Malcolm Healthcare, Inc. dba Alamitos West Health and Rehabilitation;
7. Ensign San Dimas LLC dba Arbor Glen Care Center;
8. Dragonfly Senior Living, Inc. dba Arbor Place;
9. Brody Bay Healthcare, Inc. dba Arbor Rehabilitation & Nursing Center;
10. Perris Hills Healthcare LLC dba Arrowhead Springs Healthcare;
11. City Heights Health Associates LLC dba Arroyo Vista Nursing Center;
12. Atlantic Memorial Healthcare Associates Inc. dba Atlantic Memorial Healthcare Center;
13. Dessert Mallow Healthcare, Inc. dba Beachside Nursing Center;
14. Dusk Healthcare, Inc. dba Broadway by the Sea;
15. Ensign Sonoma LLC dba Broadway Villa Post Acute;
16. Downey Community Care LLC dba Brookfield Healthcare Center;
17. Redbrook Associates LLC dba Brookside Healthcare Center;
18. Camarillo Community Care, Inc. dba Camarillo Healthcare Center;

19. Pine Forest Healthcare, Inc. dba Camino Healthcare;
20. Bernardo Heights Healthcare, Inc. dba Carmel Mountain Rehabilitation and Healthcare Center;
21. Powers Park Healthcare, Inc. dba Channel Islands Post Acute;
22. Starburst Healthcare, Inc. dba Chatsworth Park Health Care Center;
23. Claremont Foothills Health Associates LLC dba Claremont Care Center;
24. Ensign Cloverdale LLC dba Cloverdale Healthcare Center;
25. West Court Lane Healthcare, Inc. dba Courtyard Health Care Center;
26. Manzanita Healthcare, Inc. dba Coventry Court Health Center;
27. Mountain Violet Healthcare, Inc. dba Danville Post Acute Rehabilitation;
28. Stagecoach Healthcare, Inc. dba Desert Mountain Care Center;
29. Rio Hondo Healthcare, Inc. dba Downey Post Acute;
30. Moonrise Healthcare, Inc. dba Edgewater Skilled Nursing Center;
31. Sagebrush Healthcare, Inc. dba Fairfield Post Acute Rehabilitation;
32. Deergrass Healthcare, Inc. dba Fairmont Rehabilitation Hospital;
33. Clear Skies Healthcare, Inc. dba Garden View Post Acute Rehabilitation;
34. C Street Health Associates LLC dba Glenwood Care Center;
35. Devonshire Healthcare, Inc. dba Golden Hill Post Acute;
36. Morning Glory Healthcare, Inc. dba Grand Terrace Health Care Center;
37. Mission Trails Healthcare LLC dba Grossmont Post Acute Care;
38. Seaboard Healthcare, Inc. dba Huntington Park Nursing Center;
39. Rigby Creek Senior Living, Inc. dba Katella Senior Living Community;
40. Nightfall Healthcare, Inc. dba Lake Balboa Care Center;
41. Lemon Grove Health Associates LLC dba Lemon Grove Care & Rehabilitation Center;
42. Sungazer Healthcare, Inc. dba Lomita Post Acute Care Center;
43. Glimmer Healthcare, Inc. dba Madera Post Acute Center (formerly known as Ramona Nursing and Rehabilitation Center);
44. Jefferson Healthcare LLC dba Magnolia Post Acute Care;
45. La Veta Healthcare, Inc. dba Mainplace Post Acute;
46. Seagull Lane Healthcare, Inc. dba Miramar Healthcare Center;
47. Ramon Healthcare Associates LLC dba Mission Care Center;
48. Portside Healthcare, Inc. dba Mission Hills Post Acute Care;
49. Hollyleaf Healthcare, Inc. dba New Orange Hills;
50. Ensign Willits LLC dba Northbrook Healthcare Center;
51. Juniper Springs Healthcare, Inc. dba Pacific Gardens Nursing and Rehabilitation Center;
52. Strawberry Pond Healthcare LLC dba Pacific Haven Subacute and Healthcare Center;
53. Mussel Rock Healthcare, Inc. dba Pacifica Nursing and Rehabilitation Center;
54. Goldenstar Healthcare, Inc. dba Palm Terrace Care Center;
55. Gate Three Healthcare LLC dba Palm Terrace Healthcare and Rehabilitation Center;
56. West Escondido Healthcare LLC dba Palomar Vista Healthcare Center;
57. Ensign Panorama LLC dba Panorama Gardens Nursing and Rehabilitation Center;
58. Ensign Montgomery LLC dba Park View Post Acute;
59. Parkside Healthcare, Inc. dba Parkside Health and Wellness Center;
60. Ensign Palm I LLC dba Premier Care Center for Palm Springs;
61. Bell Villa Care Associates LLC Rose Villa Healthcare Center;

62. Sandpiper Senior Living LLC dba Sea Cliff Assisted Living;
63. HB Healthcare Associates LLC dba Sea Cliff Healthcare Center;
64. Rose Park Healthcare Associates, Inc. dba Shoreline Healthcare Center;
65. North Silver Healthcare, Inc. dba Solimar Post Acute;
66. Claydelle Healthcare LLC dba Somerset Subacute and Care;
67. Bayside Healthcare, Inc. dba South Bay Post Acute Care;
68. Southland Management LLC dba Southland Living;
69. La Jolla Skilled LLC dba The Springs at Pacific Regent;
70. Santa Catalina Healthcare, Inc. dba St. Catherine Healthcare;
71. Fullerton Healthcare, Inc. dba St. Elizabeth Healthcare and Rehabilitation;
72. Ensign Santa Rosa LLC dba Summerfield Health Care Center;
73. Nautilus Healthcare, Inc. dba The Cove at La Jolla;
74. Golden Eagle Senior Living, Inc. dba The Grove Assisted Living;
75. Empirecare Health Associates LLC dba The Grove Care & Wellness;
76. Tustin Hills Healthcare, Inc. dba The Hills Post Acute;
77. Ensign Whittier West LLC dba The Orchard Post Acute Care;
78. West Start Healthcare LLC dba Toluca Lake Transitional Care;
79. Tracy Ridge Healthcare, Inc. dba Turlock Nursing and Rehabilitation Center;
80. Lost Cane Senior Living, Inc. dba Turlock Residential;
81. Ensign Pleasonton LLC dba Ukiah Post Acute;
82. Upland Community Care, Inc. dba Upland Rehabilitation & Care Center;
83. Bouverie Healthcare Services, Inc. dba Valley of the Moon Post Acute;
84. Victoria Ventura Healthcare LLC dba Victoria Care Center;
85. Costa Victoria Healthcare LLC dba Victoria Healthcare & Rehabilitation Center;
86. Anza Healthcare, Inc. dba Victoria Post Acute Care;
87. Santa Maria Healthcare, Inc. dba Villa Maria Post Acute;
88. Vintage Court Healthcare, Inc. dba Vintage Faire Nursing & Rehabilitation Center;
89. Deer Tail Senior Living, Inc. dba Vintage Faire Residential;
90. Vista Woods Health Associates LLC dba Vista Knoll Specialized Care Facility;
91. Ensign Whittier East LLC dba Whittier Hills Healthcare Center;
92. Flagstone Healthcare North LLC;
93. Flagstone Healthcare Central LLC; and
94. Flagstone Healthcare South LLC.

The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employers engaged in with respect to Employees and potentially all of Employers' Aggrieved Employees.

Employees wish to pursue this action on behalf of Employees as Aggrieved Employees, on behalf of the State of California, as well as on behalf of potentially all other persons who worked for Employers in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Employees and the Aggrieved Employees, or some of them, suffered the Labor Code violations described below.

<u>Employees' Employment with Employers</u>

Employers own and/or operate facilities that provide skilled nursing, senior living, and rehabilitative care services within the State of California. Employers jointly employ Employees and the Aggrieved Employees. As such, and based upon all the facts and circumstances incident to Employers' business in California, Employers are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Employees worked for Employers in various capacities, including but not limited to physical therapist aide, dietary aide, nursing assistant, and certified nursing assistant. Their job duties included, but were not limited to, assisting residents with their daily living activities, such as bathing, dressing, and eating, monitoring vital signs, preparing and serving resident meals, cleaning, preparing treatment areas, assisting with varied non-clinical tasks.

In performing Employees' duties, Employees were regularly required to perform work (off-the-clock), without compensation, including, but not limited to, attending to residents' needs in lieu of taking a meal period. Employees were also frequently deprived of an opportunity to take legally compliant meal and rest breaks. Specifically, Employees regularly and consistently had late, short, and interrupted meal and rest breaks, and Employees have no recollection of receiving meal and rest break premiums at the regular rate of pay as required by the Labor Code. Additionally, Employees were expected to and did incur business-related expenses, including, but not limited to, the use of Employees' personal cell phones for work related purposes, and the purchase of scrubs, but Employers failed to reimburse such business-related expenses. These are just a few non-exhaustive examples of the facts and theories the Employees assert, which are described in more detail below.

Employee Christopher Villa is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately June 2021 to approximately August 2021.

Employee Crystal Applon is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately June 2023 to approximately February 2024.

Employee Jenny Brown is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately November of 2020 to the present.

Employee Angie Duran is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately December 2022 to approximately February 2023.

Employee Vesenia Aguilar Hernandez is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately August 2023 to approximately June 2024.

Employee Dayana Lobera-Rojas is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately August 2022 to approximately May 2024.

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Employee Darnell Mendros is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately February 2009 to approximately June 2023.

Employee Stephanie Thomas is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately August 2021 to approximately July 2023.

Employee Victor Spencer Wiley is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately December 2023 to approximately August 2024.

Employee Simone Woods is a resident of California who worked for Employers in California as an hourly-paid, non-exempt employee from approximately December 2023 to approximately August 2024.

During Employees' employment for Employers, Employers paid Employees an hourly wage and classified Employees as non-exempt from overtime. In some cases, Employers misclassified Employees as exempt from overtime requirements. Employers typically scheduled Employees to work at least, on average, five days in a workweek and at least, on average, eight hours per day, but Employees also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Employees' employment, Employers failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Employees with legally compliant meal periods, failed to authorize and permit Employees to take rest periods, failed to timely pay all final wages to Employees when Employers terminated Employees' employment, failed to furnish accurate wage statements to Employees, failed to indemnify Employees for business expenditures, and failed to timely produce Employees' requested employment records. As discussed below, Employees' experience working for Employers was typical and illustrative.

<u>Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages; Improper Rounding; Uncompensated On-Call/Standby</u>

Labor Code 90.5(a) provides that "it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions…." Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is 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. In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employers failed to pay Employees and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Employers required Employees and the Aggrieved Employees to work "off-the-clock," uncompensated, by, for example, requiring Employees and the Aggrieved Employees to perform work during uncompensated meal periods and rest periods, and requiring Employees and the Aggrieved Employees to perform work before clocking in and/or after clocking out. For example, Employers required employees to clock in at the exact minute of their scheduled work time. Employees, however, were instructed by management to arrive at least 30 minutes before their scheduled shifts, where employees were expected to assist with the tasks for the day, all while off the clock. As another example, Employers required Employees and Aggrieved Employees to clock out at the end of their shifts, as to not go over their scheduled hours, and to continue working even though they were clocked out. As another example, Employers required Employees and Aggrieved Employees to remain on-call and respond to work-related requests without compensation.

Some of this unpaid work should have been paid at the overtime rate. California Labor Code § 510 requires that employers compensate employees 1.5 times their regular rate of pay when employees work over eight hours per day, 40 hours per week, or when employees work up to eight hours on any seventh day of a workweek. Employers failed to properly calculate Employees' regular rate of pay when paying overtime, by failing to include all required compensation in Employees' overtime calculations, including hours worked off-the-clock. In failing to pay for all hours worked, Employers also failed to maintain accurate records of the hours Employees and the Aggrieved Employees worked.

Throughout the statutory period, Employers also engaged in a practice of improper rounding. Under *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, because Employers could and did track the exact time in minutes that Employees worked, they must pay for all time worked. When an employer uses an electronic timekeeping system to record time worked, this ability to "precisely capture time worked" means that "the employer must pay the employee for that worktime when due." (*Id.* at 671.) As a result of Employers' rounding policy, Employees consistently were not compensated at least minimum wage for all hours that Employees worked.

As a result, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods; On-Premises Meal Periods; Unlawful On-Duty Meal Period Agreements

Under California Labor Code §§ 226.7, 512, 516, and Section 11 of the applicable Wage Orders, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Employers wrongfully failed to provide Employees and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (and also including but not limited to failing to provide Employees and the Aggrieved Employees the opportunity to leave the work premises to take meal periods). For example, Employees and Aggrieved Employees were required to address and attend to the needs of patients during, and in lieu of, taking a meal break due to Employers' threats, as communicated to employees by their supervisors, that if an employee either recorded a late meal period or failed to take a meal period, then they would be written up. As a result, Employees felt compelled to clock out for a timely meal period but continued working as necessary. Employees' and Aggrieved Employees' meal breaks were also often interrupted by management, who would inquire about a resident or instruct Employees to tend to residents' needs.

Employers also continued to assert control over Employees and the Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Employees and the Aggrieved Employees permission to take a meal period under the conditions required by law, and without properly compensating Employees and the Aggrieved Employees for meal periods that were not provided as required by law. Employers also did not inform Employees of Employees' right to, nor permitted Employees to take, all of Employees' second meal periods when Employees worked at least ten hours of work in a workday and otherwise unlawfully pressured Employees to waive such breaks. Accordingly, Employers failed to provide meal periods to Employees and the Aggrieved Employees in compliance with California law.

Additionally, Employers maintained and required some Employees and Aggrieved Employees to enter into unlawful on-duty meal period agreements. The California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow," and applies only when (1) the nature of the work prevents the employee from being relieved of all duty and (2) both the employer and employee have agreed, in writing, to the on-duty meal period. (*Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276.) Where these two requirements are not met, the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. (*Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.)

Further, on information and belief, Employers had an unlawful policy and practice of editing Employees' and other Aggrieved Employees' time records to make it appear as if timely, compliant 30-minute meal periods had been taken, when that was not the case, resulting in unpaid off-the-clock work.

Additionally, Employers maintained and enforced a policy and practice of automatically deducting meal period time from Employees' and Aggrieved Employees' recorded hours worked, even when no meal periods had been provided. These practices resulted in the systematic underpayment of wages (including overtime wages) in violation of California law.

Employees and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Employers, however, regularly failed to pay Employees and the Aggrieved Employees the additional wages to which they were entitled for meal periods that were not provided. Employees do not recall receiving meal and rest break premiums for all of the late, short, and interrupted breaks.

As a result, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

<u>Failure to Authorize and Permit Rest Periods; Unlawful On-Premises Rest Periods</u>

Employers are required by California Labor Code §§ 226.7, 512, and 516 and the applicable Wage Orders to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employers have wrongfully failed to authorize and permit Employees and the Aggrieved Employees to take legally compliant rest periods in a manner required by law (and also including but not limited to failing to authorize and permit Employees and the Aggrieved Employees the opportunity to leave the work premises to take rest periods). Employers regularly required Employees and the Aggrieved Employees to work in excess of four consecutive hours a day without Employers' authorizing and permitting Employees to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Employees and the Aggrieved Employees for rest periods that were not authorized or permitted.

Instead, Employers continued to assert control over Employees and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Employees and the Aggrieved Employees permission to take a rest period. Indeed, similar to its meal period practices, many employees did not receive a complaint 10-minute rest break, whether first, second, or third rest breaks. Instead of taking their rest breaks, Employees were required to continue working as Employers' expectations and requirements were that Employees must perform all job duties in lieu of taking their breaks.

Accordingly, Employers failed to authorize and permit Employees and the Aggrieved Employees to take rest periods in compliance with California law. Employees and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employers, however, regularly failed to pay Employees and the Aggrieved Employees the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Accurately Calculate Regular Rate of Pay

Federal law defining and interpreting "regular rate" under the FLSA governs this case. (*Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 832 F.Supp.2d 1122, 1129.) This "construction is supported by California case law and the DLSE Manual, each of which looks to FLSA standards to interpret the 'regular rate of pay' under California law." (*Ibid.*) "Under the FLSA, the 'regular rate' of pay 'at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee,' subject to certain enumerated exceptions." (*Id.* at pp. 1129-30, quoting 29 U.S.C. § 207(e)(3).) "The burden is on Defendant to establish that its bonus payments fall within one of the exceptions in § 207(e)." (*Ibid.*)

The Department of Labor has interpreted section 207 to permit an employer to exclude a "discretionary bonus," but not a "promised bonus" from the "regular rate" of pay:

> Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee's continuing in employment until the time the payment is to be made and the like are in this category. They must be included in the regular rate of pay.

(29 C.F.R. § 778.211 (2011); *see also* DLSE Manual § 49.1.2.4(3), incorporating 29 C.F.R. § 778.211.)

Additionally, California and federal law require that shift differentials be included in calculating the regular rate of pay. (29 C.F.R. § 778.207(b).) However, on information and belief, Employers failed to include shift differentials in calculating the regular rate.

Employees and/or the Aggrieved Employees received various forms of bonuses/ commissions/incentive payments/shift differentials during pay periods where overtime was worked, but Employers failed to *accurately* factor in the non-discretionary remuneration into their regular rate of pay.

As outlined by the California Supreme Court in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878, for purposes of paying sick pay and meal and rest premiums, "the term 'regular rate of compensation' in section 226.7(c) has the same meaning as 'regular rate of pay' in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee."

Employers should have included all non-discretionary remuneration and shift differentials when calculating overtime pay, sick pay, COVID-19 supplemental paid sick leave, reporting time pay, and meal and rest period premium pay. Because they didn't, Employers are liable to Employees and/or the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2).

Failure to Timely Pay All Earned Wages During Employment

Based on Employers' failure to timely pay Employees and the Aggrieved Employees for all wages earned during as discussed above, Employers also violated Labor Code § 204 and 204b.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Labor Code § 204b imposes specific payroll requirements for employees paid on a weekly basis. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid according to the timeframes set by Labor Code § 204 and 204b at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Employers failed and refused to pay the Employees all wages due, and failed to pay those wages according to the timeframes set by Labor Code § 204 and 204b, in that Employees were not paid all wages for all meal periods not provided by Employers, all wages for all rest periods not authorized and permitted by Employers, and all wages for all hours worked. As a result, Employers owe Employees and the Aggrieved Employees the legally required wages for unpaid wages, and Employees and the Aggrieved Employees suffered damages in those amounts.

Moreover, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages according to the timeframes set by Labor Code § 204 and 204b.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Employees and the Aggrieved Employees seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a civil penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded. Employers, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Employees and the Aggrieved Employees.

Employers' failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employees and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employers' records. Therefore, Employees and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employers. As a direct result, Employees and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employers to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employers' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Employees and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 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.

Within the applicable statute of limitations, the employment of Employees and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employers failed, and continue to fail to pay Employees and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employers' employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Employers also violated, and continue to violate, Labor Code section 213(d) by paying final wages (if any are paid at all) via direct deposit without the employee's voluntary authorization. Employees recall that they did not receive their owed final wages at the time of their termination.

Employers' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Employees and the Aggrieved Employees are entitled to recover from Employers their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203. Moreover, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 256 and 2699(f)(2) for failing to timely pay all wages at termination, and for unlawfully making any such payment (if any) via direct deposit without the employee's voluntary authorization.

<u>Failure to Furnish Accurate Itemized Wage Statements – Facial and Derivative</u>

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Employers failed to, and continue to fail to timely furnish Employees and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Employers knowingly and intentionally issued wage statements that were *facially* noncompliant with Labor Code section 226(a) due to inaccuracies and omissions. As one example, some wage statements contain the line item "Details Not Displayed," which provides no explanation and does not reflect the associated number of hours worked and corresponding rate of pay. As another example, some wage statements do not accurately reflect the name and address of the employer. And as another example, some wage statements do not correctly identify the actual total number of hours worked because overtime hours and overtime premiums are broken out and duplicated as separate line items.

Additionally, the wage statements are inaccurate on a *derivative* basis due to Employers' failure to properly calculate and pay all wages and premiums owed. (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, 121 ("failure to report premium pay for missed breaks can support monetary liability under section 226 for failure to supply an accurate itemized statement reflecting an employee's gross wages earned, net wages earned, and credited hours worked").)

Because Employers violated Labor Code § 226, Employees and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Employees and similarly Aggrieved Employees are entitled to recover from Employers the greater of their actual damages caused by Employers' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee. Moreover, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2800 requires an employer to indemnify their employees for losses caused by the employer's want of ordinary care. Labor Code § 2802(a) also provides that employers shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Employers wrongfully required Employees and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Employers. Employees and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related expenses, including, but not limited to, the use of personal cell phones, computers, internet, and vehicles, and the purchasing of scrubs, uniforms, footwear, PPE, and other tools, supplies, and equipment. Employees and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Employers, but Employers failed to indemnify Employees and the Aggrieved Employees for these employment-related expenses.

As a result, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Employees and the Aggrieved Employees for necessary business expenditures.

Failure to Produce Requested Employment Records

Employees requested a copy of their personnel files, but Employers did not provide them. Labor Code § 226 provides that current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request.

Labor Code § 1198.5(a) also provides that every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employees' performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions.

Labor Code § 432 provides that if an employee or applicant signs any instrument relating to the obtaining or holding of employment, he or she shall be given a copy of the instrument upon request. On information and belief, not just Employees, but also Aggrieved Employees, or some of them, have submitted written request(s) to Employers for their payroll records, timecards, and personnel records but did not timely receive them as required by the Labor Code.

As a result, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 226(f), 1198.5(k), and 2699 for failing to timely produce the requested records.

Recordkeeping Requirement Violations

California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by Employees and Aggrieved

Employees. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, Employers failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when Employees and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, Employers failed and continue to fail to keep accurate and complete records showing total hours worked by Employees and Aggrieved Employees by virtue of Employers' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices. Employers failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of Employers' failure to relieve Employees and Aggrieved Employees of all duties and Employers' control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, Employers further failed, and continue to fail, to record the true start and end times of Employees' and Aggrieved Employees' meal periods.

Based on further information and belief, Employers further failed and continue to fail, to record the true start and end times of Employees' and Aggrieved Employees' work shifts. Additionally, Employers failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time and sick leave balances for Employees and Aggrieved Employees.

Employers' failure to keep "accurate and complete" payroll records for Employees and Aggrieved Employees violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Employers to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each Aggrieved Employees, results in a separate civil penalty.[1]

Violation of Wage Theft Protection Act of 2011

Based on information and belief, Employers failed, and continue to fail, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employees and Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employers, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employers under Labor Code section 2810.5. Employees are informed and believe that failure to provide such information, including rates of pay that are in effect, has permitted Employers to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employees are additionally informed and believe that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Among other relief, Employees and Aggrieved

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

Employees may collect from Employers in connection with these violations' civil penalties pursuant to Labor Code sections 558 and 2699.

<u>Violation of California Labor Code §§ 245-249 (California Paid Sick Leave Law)</u>

Throughout the relevant time period, Employers failed to provide proper paid sick leave to Employees and other Aggrieved Employees as required by Labor Code sections 246 and 246.5. Employers either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to Employees and other Aggrieved Employees by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods that were restricted to Employers' premises) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, Employers further failed to provide notice of the correct sick leave amount balance available to Employees and other Aggrieved Employees on their wage statements or other written statement.

Based on information and belief, Employers failed to put Aggrieved Employees on notice of their paid sick leave rights, thereby failing to put their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, Employers failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the Aggrieved Employees, or some of them.

Based on information and belief, Employers further failed to provide notice of the correct sick leave amount balance available to Employees and other Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure, Employees and other Aggrieved Employees would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation. This illegal retention of paid sick leave is unlawful, and Employees seek all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of Employees and all Aggrieved Employees.

In violation of Labor Code section 247.5, Employers failed to maintain records documenting the hours worked and paid sick days accrued and used by Employees and all Aggrieved Employees, permitting the presumption that Employees and all Aggrieved Employees were entitled to the maximum number of hours accruable under this article.

Upon information and belief, Employers further failed and continue to fail to comply with Labor Code section 246, by failing to provide Employees and all Aggrieved Employees with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages. Employers unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of Employers' failure to properly institute a paid sick leave program.

Additionally, Employers failed and continue to fail to comply with Labor Code sections 233 and 234 by denying Employees and Aggrieved Employees the right to use accrued sick leave to care for ill family members on the same terms permitted for their own illness. On information and belief, Employees allege that all of these practices were experienced and continue to be experienced by other Aggrieved Employees.

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

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

Failure To Provide Supplemental Paid Sick Leave (COVID-19 Leave)

Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, Employers violated Labor Code section 248.2 by failing to properly calculate and accrue COVID-19 leave, failing to allow use of COVID-19 leave for purposes permitted by law, failing to pay COVID-19 leave at the proper rate, and failing to provide balance information for COVID-19 leave as required by law.

Refusal to Make Payment

Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due. Employers violated and continue to violate Labor Code section 216 by failing to pay Employees and all Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay Employees and all Aggrieved Employees an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject Employers to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which the statute's provisions were violated.[2]

Suitable Seating Violations

Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

> (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
>
> (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed

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

> in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, Employers failed to provide Aggrieved Employees with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that Aggrieved Employees were working. Lastly, based on information and belief, there were periods of time when Aggrieved Employees were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

Employers' Aggrieved Employees worked in various positions. The nature of Employees' and other Aggrieved Employees' work reasonably permitted the use of seats. However, Employers failed to provide suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting Employers to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a separate civil penalty.[3]

<u>Statutory Wage Violations</u>

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

As described above, Employers willfully and systematically denied Employees and other Aggrieved Employees of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. Employers acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, Employers paid Employees and other Aggrieved Employees lower wages than those they were entitled to while purporting that Employees and all Aggrieved Employees were properly paid. As such, Employees and all Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

<u>Failure to Allow Use of Vacation/Paid Time Off During Employment; Failure to Pay Vested Vacation/Paid Time Off at Proper Rate at Time of Termination</u>

Based on information and belief, Employers had and continue to have a uniform policy and practice of failing to allow Employees and other Aggrieved Employees and to use their earned vacation/paid time off during their employment. Further, California Labor Code section 227.3

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[3] See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, Employers had and continue to have a uniform policy and practice of failing to pay all vested, accrued paid time off to Employees and other Aggrieved Employees upon separation of employment at the proper rate, in violation of California law, including but not limited to, Labor Code section 227.3.

Failure to Timely Provide Temporary Workers with Owed Wages

On information and belief, Employers had and have a policy of failing to provide all temporary workers with owed wages weekly by not later than the regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Employers would be liable for civil penalties pursuant to Labor Code sections 201.3.

Unlawful Agreements/ Unlawful Criminal History Inquiries

Unlawful Agreements

Labor Code section 432.5 provides that "no employer … shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer … to be prohibited by law." Based on information and belief, Employers required Employees and Aggrieved Employees to agree in writing to unlawful conditions of employment including but not limited to, unlawful non-compete and/or non-solicitation agreements as well as unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

Based on information and belief, Employers also required Employees and Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, based on information and belief, Employers required Employees to submit and/or agree to submit in writing to an unlawful background check as a condition of obtaining and/or holding employment in violation of, including but not limited to, Labor Code section 432.5.

Based on information and belief, Employers required Employees and Aggrieved Employees to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq*. and 15 U.S.C. section 1681, *et seq*., including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check. By requiring Employees and Aggrieved Employees to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, Employers violated Labor Code section 432.5, the ICRAA, and the FCRA.

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

Based on further information and belief, Employers knew that requiring Employees and Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful. By requiring Employees and Aggrieved Employees to agree in writing to unlawful provisions as a condition of employment, Employers violated Labor Code section 432.5, the ICRAA, and the FCRA.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, Employers asked Employees and Aggrieved Employees about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, Employers, in violation of California law, including but not limited to the Fair Chance Act (Government Code § 12952)/the California Fair Employment and Housing Act ("FEHA"), asked Employees and Aggrieved Employees about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

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

Unlawful PAGA Waiver

Additionally, Employers violated Labor Code section 432.5 by requiring Employees and Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA '"…is a representative action on behalf of the state"' *Kim v Reins Int'l California, Inc.,* (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int'l California, Inc.,* (2020) 9 Cal. 5th 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action … is a representative action on behalf of the state.'")

Upon information and belief, Employers required Employees and Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring Employees and Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, Employers required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5. As such, Employees and Aggrieved Employees continue to be subject to various unlawful provisions as a condition of employment.

Preventing Employees from Using or Disclosing Skills, Knowledge, and Experience

On information and belief, Employers had and have a policy or practice of preventing Employees and/or other Aggrieved Employees from using or disclosing the skills, knowledge, and experience they obtained at Employers for purposes of competing with Employers, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employers and under what circumstances they might be receptive to an offer from a rival employer. As such, Employees are informed and believe that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employers would be liable for civil penalties pursuant to Labor Code section 2699.

Whistleblower Violations

On information and belief, Employers had and have a policy or practice of preventing Employees and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Employers to their managers or outside Employers to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employees are informed and believe that these policies and/or practices prevent Employees and/or other Aggrieved Employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code sections 98.6, 232, and 232.5. These violations of the Labor Code would expose Employers to liability for civil penalties pursuant to Labor Code section 2699.

Workplace Health and Safety Violations

On information and belief, Employers had and have a policy or practice of failing to furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations and processes which are reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401. Employees are informed and believe, and based thereon allege that Employers had and have a policy or practice of requiring or permitting employees to go or be in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402. Employees are informed and believe, and based thereon allege that Employers had and have a policy or practice of failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403. Employees are informed and believe, and based thereon allege that these failures include, without limitation, failing to disinfect time clocks and other surfaces after use by Employees and/or other Aggrieved Employees; failing to provide adequate protection equipment to Employees and/or other Aggrieved Employees; and failing to provide adequate distance in working conditions between Employees and/or other Aggrieved Employees.

On information and belief, Employers violated section 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each sex of employee.

Failure to Pay Reporting Time

Under Section 5 of the applicable Wage Order, employers are required to pay employees reporting time pay when an employee reports to work, but is not put to work or works less than half of his or her usual or scheduled day's work. In said circumstances, employees are entitled to be paid for at least one-half of their shift for a minimum of two hours and a maximum of four hours, at his or her regular rate of pay. Despite this, Employers wrongfully failed to pay Employees and Aggrieved Employees their owed reporting time pay, in instances where Employees and Aggrieved Employees reported to work but were not put to work or worked less than half of their usual or scheduled day's work. On information and belief, Employers violated section 1198 and applicable Wage Orders by failing to pay reporting time pay at the proper rate.

Day of Rest Violations

California Labor Code §§ 551 and 552 requires employers to provide employees with one day's rest in a seven day workweek and prohibits employers from causing their employees to work more than six days in a seven day workweek. On information and belief, Employers regularly scheduled and/or required Employees and/or other Aggrieved Employees to work seven consecutive days, without providing the legally required day of rest. Employers knew, or reasonably should have known, that their scheduling practices failed to comply with California law, yet they continued to engage in such conduct throughout the relevant time period. These violations of the Labor Code would expose Employers to liability for civil penalties pursuant to Labor Code section 2699.

Failure to Pay Split Shift Premiums

Under Section 4(C) of the applicable Wage Order, employers must pay a premium of one hour of pay when an employee's work schedule is interrupted by non-paid non-working periods established by the employer, other than a rest or meal period. Throughout the statutory period, Employers have wrongfully required Employees and the Aggrieved Employees to work split shifts, and have failed to pay them their owed split shift premiums. Employers' failure to do so violates Labor Code §§ 200, 204, 226(a), 510, 1194, 1197, and 1198.

<u>Unlawful Deductions from Wages</u>

California Labor Code § 221 makes it illegal for an employer to collect or receive from an employee any part of wages paid by an employer to an employee. Despite this, Employers unlawfully deducted wages paid to Employees and Aggrieved Employees throughout the statutory period. For example, Employers had and have a practice of paying meal period premiums and/or overtime premiums in one paycheck and then "clawing back" or deducting those premiums from subsequent paychecks without the employee's authorization or consent. As a result, Employers are liable for civil penalties pursuant to Labor Code section 225.5.

<u>Misclassification as Exempt</u>

On information and belief, Employers intentionally misclassified some Employees and Aggrieved Employees as exempt from overtime and meal and rest break requirements, thereby depriving Employees and Aggrieved Employees of protections afforded by the Labor Code. Employers' misclassification violates Labor Code §§ 200, 204, 226, 226.6, 226.7, 510, 512, 516, 558, 558.1, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, and 2810.5.

<u>Unfair Business Practices Under Business and Professions Code §§ 17200, *et seq.*</u>

Employers' conduct has been, and continues to be, unfair, unlawful, and harmful to Employees and other Aggrieved Employees, and to the general public. Employers' activities are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq*. A violation of California Business & Professions Code §§ 17200, *et seq*. may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq*.

<u>Action for Civil Penalties Under PAGA</u>

In light of the above, Employees allege that Employers violated the following provisions of the Labor Code with respect to the Employees and Aggrieved Employees:

1. Labor Code §§ 90.5(a), 200, 204, 218, 510, 558, 558.1, 1182.11-1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 1199 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code §§ 226.7, 512, and 516 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code §§ 226.7, 512, and 516 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code §§ 200, 204, 226.7, 246, and 510, and applicable Wage Orders by failing to include all non-discretionary remuneration and shift differentials when calculating overtime pay, sick pay, COVID-19 supplemental paid sick leave, reporting time pay, and meal and rest period premium pay;
5. Labor Code §§ 204, 204b, 210, and 216 by failing to pay all earned wages two times per month and/or as required for employees paid on a weekly basis;

6. California Labor Code §§ 1174 and 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
7. Labor Code §§ 201 to 203, 213(d), 256, 2926, and 2927 by willfully failing to pay all wages owed at termination;
8. Labor Code §§ 226, 226.2, 226.3, and 226.6 by failing to provide accurate itemized wage statements;
9. Labor Code §§ 2800, 2802, and 2804 by failing to indemnify for necessary expenditures;
10. Labor Code §§ 226, 432, and 1198.5 by failing to timely produce requested payroll records, timecards, and personnel records;
11. Labor Code §§ 1174 and 1174.5 by failing to keep accurate and complete payroll records;
12. Labor Code § 2810.5 for failing to provide compliant Wage Theft Prevention Act notices;
13. Labor Code §§ 233, 234, and 245-249 (Healthy Workplaces, Healthy Families Act of 2014) by failing to provide proper sick leave and supplemental COVID-19 paid sick leave and kin care leave;
14. Labor Code § 216 for refusal to pay wages due and payable and/or denial of the validity of any claim to wages due;
15. Section 14(A-B) of all applicable IWC Wage Orders for failure to provide suitable seating;
16. Labor Code §§ 223, 224, 225, and 225.5 for secretly paying wages lower than required by statute while purporting to pay legal wages;
17. Labor Code § 227.3 for failure to allow use of vacation/PTO during employment and failure to pay vested vacation and/or paid time off at proper rate at termination;
18. Labor Code § 201.3 for failure to timely provide temporary workers with wages;
19. Labor Code §§ 232, 232.5, 432, 432.5, 432.7, and 2804 for unlawful agreements;
20. Labor Code §§ 432.5 and 432.7 and Government Code § 12952 (Fair Chance Act) for unlawful inquiries into criminal histories;
21. Labor Code §§ 432.5, 1024.5, Civil Code §§ 1786, *et seq*. (California Investigative Consumer Reporting Agencies Act), and 15 U.S.C. section 1681, *et seq*. (Fair Credit Reporting Act) for unlawful credit inquiries and unlawful and non-compliant background checks;
22. Labor Code §§ 98.6, 232, 232.5, 1102.5, and 1197.5 for preventing employees from using or disclosing the skills, knowledge and experience they obtained at Employers, and whistleblower violations;
23. Labor Code §§ 6401, 6402, and 6403 and Title 8 of California Code of Regulations sections 1527, 3366, 3457, 8397.4, for workplace health and safety violations;

24. Labor Code §§ 200, 204, 558, 558.1, 1185 and 1198 and applicable Wage Orders by failing to pay reporting time pay;
25. Labor Code §§ 551 and 552 by failing to provide employees with at least one day of rest in a seven-day workweek;
26. Labor Code §§ 200, 204, 226(a), 510, 1194, 1197, and 1198 for failure to pay split shift premiums;
27. Labor Code § 221 for unlawful deductions from wages; and
28. Labor Code §§ 200, 204, 226, 226.6, 226.7, 510, 512, 516, 558, 558.1, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, and 2810.5 for misclassifying employees as exempt.

Therefore, on behalf of potentially all Aggrieved Employees, Employees seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and 2699.

Employees have placed Employers on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

Mariam Nazaretyan, Esq.