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on behalf of herself, the State of California,
10 and others similarly situated and aggrieved

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**
13

14 ALEXA MELARA, on behalf of herself,
15 the State of California, and others similarly
situated and aggrieved,

16
17 Plaintiff,

18 v.
19

20 ANZA MANAGEMENT COMPANY, a
California corporation; and DOES 1-100,
21 inclusive,

22 Defendants.
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Case No.: **22STCV32206**

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

1 Plaintiff ALEXA MELARA ("PLAINTIFF" or "PLAINTIFF MELARA"), an individual on
2 behalf of herself, the State of California, and all other Aggrieved Employees (defined below), hereby
3 files this Complaint against Defendants ANZA MANAGEMENT COMPANY, a California
4 corporation; and DOES 1-100, inclusive, (collectively referred to herein as "DEFENDANTS").
5 PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

23 4. PLAINTIFF resides in the State of California. PLAINTIFF worked for
24 DEFENDANTS in the State of California as a non-exempt employee during the relevant period.

25 5. Defendant ANZA MANAGEMENT COMPANY, is a California corporation that, at
26 all relevant times, was authorized to do business within the State of California and is doing business
27 in the State of California.

28 6. The true names and capacities of the DOE Defendants sued herein as DOES 1

1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
2 Defendant by said fictitious names. Each of the DEFENDANTS designated herein as a DOE is
3 legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to
4 amend this Complaint to reflect the true names and capacities of the Doe Defendants when such
5 identities become known.

6 7. PLAINTIFF is further informed and believes that, at all relevant times, each
7 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
8 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
9 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
10 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
11 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
12 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
13 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
14 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
15 controlled, aided and abetted the conduct of all other Defendants.

16 **JOINT LIABILITY**

17 8. Under California law, the definition of the terms “to employ” are broadly construed
18 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
19 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
20 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
21 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
22 was to reach situations in which multiple entities control different aspects of the employment
23 relationship. Supervision of the work, in the specific sense of exercising control over how services
24 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
25 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary
26 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

27 9. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the
28 Aggrieved Employees were jointly employed by DEFENDANTS for purposes of the Wage Orders,

1 under the alternative definitions of “to employ” adopted by the California Supreme Court in
2 *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages, hours
3 and working conditions of PLAINTIFF and the Aggrieved Employees; (2) suffered or permitted
4 PLAINTIFF and the Aggrieved Employees to work for them; and, (3) engaged PLAINTIFF and the
5 Aggrieved Employees to work for them.

6 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
7 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
8 human resources as a set forth herein. As a result, DEFENDANTS utilized the same unlawful
9 policies and practices and subjected all of the Aggrieved Employees to these same policies and
10 practices.

11 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
12 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
13 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
14 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees’
15 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
16 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
17 Employees. Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS
18 created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and
19 overtime pay, time-keeping practices, meal and rest periods, and other working conditions that were
20 distributed to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that
21 DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF and the
22 Aggrieved Employees in a uniform manner. DEFENDANTS collectively represented to
23 PLAINTIFF and the Aggrieved Employees that each was an "at-will" employee of DEFENDANTS,
24 and that DEFENDANTS collectively retained the right to terminate PLAINTIFF and the Aggrieved
25 Employees’ employment with or without cause. Upon information and belief, DEFENDANTS
26 further collectively represented to PLAINTIFF and the Aggrieved Employees in writing the details
27 of their compensation, and the manner in which they were to take meal and rest periods, the
28 procedures required by DEFENDANTS collectively for recordation of hours worked and the

1 policies applicable to PLAINTIFF and the Aggrieved Employees by which DEFENDANTS
2 collectively would evaluate the wage rates of PLAINTIFF and the Aggrieved Employees.

3 12. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
4 and working conditions of PLAINTIFF and the Aggrieved Employees. As such, DEFENDANTS
5 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
6 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
7 PLAINTIFF seeks relief in this Complaint.

8 13. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
9 control over, applied the same policies and practices, and engaged in the same acts and omissions
10 with regard to the other Aggrieved Employees.

11 **PAGA ALLEGATIONS**

12 14. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
13 of herself, the State of California and Aggrieved Employees, regarding violations of the California
14 Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

15 All current and former non-exempt employees employed by DEFENDANTS
16 in California at any time from one year plus 65 days from filing of the initial
17 Complaint through the present ("PAGA Period").

18 15. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
19 section 2699(c), as she was employed by DEFENDANTS during the applicable statutory limitations
20 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
21 PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other Aggrieved
22 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
23 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
24 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
25 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
26 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
27 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

1 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

2 16. On July 1, 2022, PLAINTIFF MELARA, through counsel, gave written notice by
3 online filing with the California Labor and Workforce Development Agency ("LWDA") informing
4 it that DEFENDANTS failed to comply with California's labor laws with regard to the allegations
5 alleged in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's claims for
6 violations of the California Labor Code and the applicable wage orders on behalf of herself, the
7 State of California and other Aggrieved Employees. The LWDA assigned PLAINTIFF the
8 following case number: LWDA-CM-892557-22. PLAINTIFF, through her counsel, also sent the
9 PAGA Notice to DEFENDANTS via certified mail, on July 1, 2022. Attached hereto as **Exhibit 1**
10 is a true and correct copy of PLAINTIFF's PAGA Notice.

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

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

19 **FACTUAL ALLEGATIONS**

20 19. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
21 employed by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised
22 control over PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them
23 to work. PLAINTIFF and the Aggrieved Employees worked for DEFENDANTS in one or more of
24 the following positions/titles, including but not limited to: community manager, onsite property
25 manager, property assistant community manager custodian, maintenance technician, junior
26 technician, leasing consultant, onsite leasing consultant, and/or related positions/titles.

27 20. PLAINTIFF worked for DEFENDANTS as a non-exempt employee from in or about
28 February 2018 until DEFENDANTS terminated PLAINTIFF's employment, on or about August

1 19, 2021. PLAINTIFF worked for DEFENDANTS as a non-exempt Community Manager, onsite
2 property manager, and/or other similar title(s) at, including but not limited to, DEFENDANTS'
3 housing/apartment complex known as "Windrose" and located at 44710 N. Division St. in
4 Lancaster, California. PLAINTIFF's job duties included, but were not limited to, responding to
5 residential disturbances/tenant inquiries, scheduling maintenance workers/projects/filling
6 maintenance orders for work on DEFENDANTS' residential units and common areas, showing
7 rental units, collecting tenant signatures on various documents, among other duties.

8 21. PLAINTIFF typically worked shifts lasting at least 8 ½ hours per day, at least five
9 (5) days per week. DEFENDANTS compensated PLAINTIFF on an hourly basis but only for time
10 counted by DEFENDANTS as hours worked. Based on information and belief, DEFENDANTS
11 also provided PLAINTIFF and Aggrieved Employees with onsite lodging which DEFENDANTS
12 accounted for as a portion of their earned compensation. Based on information and belief,
13 PLAINTIFF and Aggrieved Employees were also compensated with non-discretionary
14 remuneration, including but not limited to, non-discretionary commissions and/or bonuses/incentive
15 pay (e.g., for meeting high-unit occupancy and/or budget quotas) and/or other non-discretionary
16 compensation.

17 22. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
18 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
19 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
20 Employees for all hours worked by virtue of, including but not limited to, DEFENDANTS'
21 automatic deduction policies and practices for meal periods (described below), failure to relieve
22 employees of all duties and employer control during unpaid meal periods or otherwise unlawful
23 meal period practices, time-rounding policies and practices, payment according to scheduled hours
24 worked instead of actual time worked, and mandated pre-shift/post-shift and/or other mandated off-
25 the-clock work policies and practices.

26 23. As explained below, PLAINTIFF and Aggrieved Employees were consistently
27 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods. Based on
28 information and belief, despite failing to provide lawful meal periods, DEFENDANTS implemented

1 a policy and/or practice of automatically deducting at least thirty minutes (usually at least sixty
2 minutes) per shift for meal periods, despite having actual and/or constructive knowledge that
3 PLAINTIFF and Aggrieved Employees were working through part of all of these meal periods,
4 thereby depriving PLAINTIFF and Aggrieved Employees of all earned minimum and overtime
5 wages.

6 24. Moreover, PLAINTIFF alleges on information and belief that DEFENDANTS
7 implemented a time-rounding system that as applied systematically deprived Aggrieved Employees
8 of compensable time because the time-rounding system implemented by DEFENDANTS would
9 almost always, if not always, result in understating actual compensable work time. Based on
10 information and belief, DEFENDANTS had and continue to have a continuous policy of paying
11 Aggrieved Employees for scheduled hours, rather than actual hours worked and requiring pre-shift
12 and/or post-shift off-the-clock work. Based on information and belief, DEFENDANTS instructed
13 PLAINTIFF and Aggrieved Employees to record their scheduled shift start and end times regardless
14 of when PLAINTIFF and Aggrieved Employees actually started and stopped working on those days,
15 which resulted in significant off-the-clock work and the underpayment of wages owed to
16 PLAINTIFF and Aggrieved Employees.

17 25. Based on information and belief, at times, DEFENDANTS purported to compensate
18 for some “after-hours” work by having PLAINTIFF and Aggrieved Employees notate on a written
19 “Missed Punch Report” form time spent performing certain “after-hours” work activities. However,
20 PLAINTIFF and Aggrieved Employees were instructed by their supervisors to round their time
21 down and/or forego recording all time spent performing work activities outside of their scheduled
22 shift times and/or their reported work time was rounded down by DEFENDANTS such that
23 PLAINTIFF and Aggrieved Employees were not compensated for all hours worked, including but
24 not limited to, pre-shift and/or post shift off-the-clock work, such as, but not limited to, all time
25 spent responding to resident noise complaints and handling resident parking issues/towing vehicles
26 after hours, attending to tenant lock-outs, providing access to residents/maintenance vendors and/or
27 assisting maintenance vendors with onsite projects after hours, among other off-the-clock work
28 tasks DEFENDANTS required PLAINTIFF and Aggrieved Employees to perform outside of their

1 scheduled shift times. PLAINTIFF estimates this pre-shift and/or post-shift off-the-clock work
2 resulted at times in at least several hours of off-the-clock work each week that was not recorded and
3 not compensated by DEFENDANTS and, as such, resulted in the significant underpayment of
4 minimum and overtime wages owed to PLAINTIFF and Aggrieved Employees.

5 26. Moreover, PLAINTIFF and Aggrieved Employees were required to perform
6 additional pre-shift and post shift off-the-clock work. For example, prior to clocking in for their
7 scheduled shifts, PLAINTIFF and Aggrieved Employees were required to start and/or boot up
8 DEFENDANTS' computer systems, phone systems, and/or software so as to have all systems
9 running at the start of the scheduled shift. As such, PLAINTIFF spent at least five to ten minutes
10 before each scheduled shift booting up and/or logging into and/or otherwise preparing various work
11 applications in order to clock in and begin her shift. This pre-shift work was off-the-clock and
12 uncompensated resulting in unpaid minimum and overtime wages.

13 27. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
14 Employees for time they were required to spend completing orientation, policy questionnaires,
15 and/or time spent completing the onboarding process, including but not limited to, time spent
16 reviewing various documents and policies as required by DEFENDANTS. Based on further
17 information and belief, DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
18 Employees for time spent completing trainings and/or reviewing policies and/or other documents
19 during their employment as required by DEFENDANTS. Based on information and belief, this work
20 time was completed off-the-clock and was not compensated. Based on information and belief,
21 DEFENDANTS had and continue to have a uniform policy and practice of requiring Aggrieved
22 Employees to complete mandatory off-the-clock administrative tasks, onboarding, training,
23 certification, and/or other tasks without compensating for all hours worked. DEFENDANTS'
24 failure to pay for all time worked by virtue of, including but not limited to, its time-rounding
25 practices and only paying for scheduled hours resulted in the underpayment of minimum wages
26 owed to Aggrieved Employees as well as unpaid overtime wages for those Aggrieved Employees
27 who worked more than eight (8) hours in a day and/or forty hours in a week.

28 28. Based on information and belief, DEFENDANTS failed/fail to compensate

1 Aggrieved Employees for additional time spent performing pre-shift and/or post-shift off-the-clock
2 work/work outside of their scheduled shifts. Based on information and belief, PLAINTIFF and
3 Aggrieved Employees were not compensated all owed minimum and overtime wages for all time
4 spent performing work duties outside of their scheduled shifts and/or time spent on call. For
5 example, PLAINTIFF was required to monitor her work phone and be on call twenty-four hours per
6 day, seven (7) days per week, including but not limited to, on purported days off and/or what were
7 supposed to be vacation days. PLAINTIFF would regularly have to assist tenants and/or perform
8 other work duties after hours without being compensated for this on-call time/time spent performing
9 work duties outside of her scheduled shift times. PLAINTIFF's supervisors informed PLAINTIFF
10 that it was part of her job to so monitor her phone for any work calls and respond to any
11 property/tenant issues twenty-four hours per day seven (7) days per week. Based on information
12 and belief, other Aggrieved Employees were also required, suffered and/or permitted to monitor
13 work communication devices, respond to work situations, work-related phone calls and/or text
14 messages and/or be on call outside of their scheduled shift times without being compensated for all
15 time spent under DEFENDANTS' control.

16 29. Based on information and belief, DEFENDANTS also failed to pay Aggrieved
17 Employees minimum wages for time counted by DEFENDANTS as hours worked. For example, in
18 2021, the minimum wage rate in California was \$14 per hour for employers with 26 or more
19 employees. Based on information and belief, in 2021, DEFENDANTS had more than 26 employees
20 and were required to pay its employees in California at least \$14 per hour. However, based on
21 information and belief, DEFENDANTS failed to pay at least minimum wage for all hours worked.
22 As such, DEFENDANTS violated California's minimum and overtime wage laws by paying below
23 the mandated minimum wage rate and consequently below the overtime wage rate.

24 30. Additionally, based on information and belief, DEFENDANTS instituted a
25 commission-based and or piece-rate-based compensation scheme that resulted in pay periods during
26 which Aggrieved Employees were denied the minimum wage for all hours worked. Based on
27 information and belief, DEFENDANTS paid Aggrieved Employees on a commissioned and or
28 piece-rate basis, at least during some pay periods, during the relevant time period. However, based

1 on information and belief, DEFENDANTS failed to separately compensate for all non-
2 commission/non-piece rate related activities/all non-productive time, including but not limited to,
3 all rest breaks. DEFENDANTS' failure to separately so compensate resulted in Aggrieved
4 Employees not being paid for all hours worked in violation of California minimum wage laws.

5 31. Based on information and belief, DEFENDANTS misclassified Aggrieved
6 Employees as exempt employees to try to evade California wage and hour laws including but not
7 limited to, payment of minimum and overtime wages and provision of meal and rest periods even
8 though misclassified Aggrieved Employees did not satisfy any test for exemption under California
9 law. For example, based on information and belief, PLAINTIFF and Aggrieved Employees did not
10 regularly exercise discretion/independent judgment in their jobs and typically spent more than fifty
11 percent of their workday performing non-exempt duties such as, but not limited to, scheduling
12 maintenance workers, collecting signatures on documents/clerical/ministerial duties, and/or other
13 non-discretionary duties not requiring the exercise of independent judgment to perform.

14 32. Based on further information and belief, Aggrieved Employees were not
15 compensated with a monthly salary (exclusive of the value of any lodging) that equated to twice the
16 California minimum wage rate. See, Labor Code section 515 and Cal. Code of Regs., tit. 8, § 11040
17 [providing that, for each exempted category, the employee must earn "a monthly salary equivalent
18 to no less than two (2) times the state minimum wage for full-time employment"].

19 33. Based on information and belief, Aggrieved Employees that were paid on a salary
20 basis and/or otherwise misclassified as exempt were denied all owed minimum and overtime wages
21 due to DEFENDANTS' misclassification scheme.

22 34. Section 10 of all applicable IWC Wage Orders states that "lodging may not be
23 credited against the minimum wage without a voluntary written agreement between the employer
24 and the employee." Case law indicates that the agreement must state that the employer will credit
25 lodging against the employee's wages. See, *Von Nothdurft v. Steck* (2014) 227 Cal.App.4th 524
26 (2014) (the employer and the employee "must voluntarily agree to credit lodging against the
27 employee's wages."). Assuming the existence of such a voluntary written agreement, Section 10 of
28 IWC Wage Order 5-2001 (and all applicable IWC Wage Orders) sets forth the maximum amounts

1 that can be credited for lodging against the minimum wage.

2 35. Based on information and belief, DEFENDANTS had and have a policy and practice
3 of unlawfully crediting lodging against the minimum wages owed to Aggrieved Employees,
4 resulting in the underpayment of minimum wages owed to Aggrieved Employees. For example,
5 based on information and belief, DEFENDANTS credit lodging towards its minimum wage
6 obligations to Aggrieved Employees that exceeds the maximum allowable rental credit under
7 California law and/or DEFENDANTS fail to execute voluntary written agreement(s) to credit
8 lodging against DEFENDANTS' minimum wage obligations due to, including but not limited to,
9 failure to explicitly state that the rental credit is being applied towards the employer's minimum
10 wage obligations and/or failure to execute any voluntary written agreement, as required under
11 California law. See Section 10 of IWC Wage Order Section 5-2001 (and all applicable IWC Wage
12 Orders).

13 36. Based on information and belief, DEFENDANTS had and continue to have a
14 continuous policy of paying PLAINTIFF and Aggrieved Employees for scheduled hours, rather than
15 actual hours worked. DEFENDANTS' failure to pay for all time worked by virtue of its time-
16 rounding practices and/or only paying for scheduled hours rather than for actual time worked
17 resulted in the underpayment of minimum wages owed to PLAINTIFF and Aggrieved Employees
18 as well as unpaid overtime wages for PLAINTIFF and those Aggrieved Employees who worked
19 more than eight (8) hours in a day and/or forty hours in a week.

20 37. Based on information and belief, PLAINTIFF and Aggrieved Employees were
21 required to complete other off-the-clock work tasks after clocking out for the end of their shifts
22 and/or during uncompensated meal periods, resulting in significant off-the-clock work and the
23 underpayment of minimum and overtime wages owed to PLAINTIFF and Aggrieved Employees.

24 38. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
25 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per day and for time
26 worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation
27 of California's overtime law.

28 39. Based on further information and belief, DEFENDANTS had and continue to have

1 a policy and practice of rounding total overtime hours worked by Aggrieved Employees which
2 resulted in the underpayment of overtime wages owed to Aggrieved Employees.

3 40. Based on information and belief, DEFENDANTS failed to incorporate all non-
4 discretionary remuneration, including but not limited to, non-discretionary commissions,
5 bonus/incentive pay and/or other non-discretionary pay into the regular pay rate(s) of pay used to
6 calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
7 wages owed to PLAINTIFF and Aggrieved Employees. For example, based on information and
8 belief, DEFENDANTS compensated Aggrieved Employees with non-discretionary
9 bonuses/incentive pay (e.g., for meeting high-unit occupancy and/or budget quotas) and/or
10 commission pay in pay periods during which they worked overtime, yet DEFENDANTS failed to
11 include the non-discretionary pay in the regular pay rate used to calculate the owed overtime rate.
12 Failing to include non-discretionary compensation in the regular pay rate resulted in a miscalculation
13 of the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF
14 and Aggrieved Employees.

15 41. Based on information and belief, DEFENDANTS had actual and/or constructive
16 knowledge that its time-rounding, payment according to scheduled hours rather than actual time
17 worked, auto-deduction policies, policies and practices that failed to relieve Aggrieved Employees
18 of all duties and employer control during unpaid meal periods, and other off-the-clock work policies
19 and practices described above resulted in violations of California's minimum and overtime wage
20 laws and other violations described below.

21 42. **Meal Period Violations.** PLAINTIFF and Aggrieved Employees regularly worked
22 shifts of five and one half (5 ½) hours or more and were entitled to at least one thirty-minute,
23 uninterrupted, off-duty meal break per shift. However, DEFENDANTS failed to provide
24 PLAINTIFF and the Aggrieved Employees with timely, thirty-minute, uninterrupted meal breaks
25 and/or required PLAINTIFF and the Aggrieved Employees to work through purported meal breaks,
26 remain on DEFENDANTS' premises/tethered to their worksites and/or remain tethered to
27 DEFENDANTS' communication devices during purported meal periods. Based on information and
28 belief, PLAINTIFF and Aggrieved Employees were not adequately informed, authorized, instructed

1 about, nor permitted an opportunity to take lawful meal breaks per California law.

2 43. PLAINTIFF and Aggrieved Employees were consistently unable to take timely, off
3 duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods,
4 interrupted meal periods and/or work through part or all their meal periods due to the nature and
5 constraints of their job duties, lack of relief workers available, and/or commentary from supervisors
6 pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. For
7 example, PLAINTIFF's supervisor informed PLAINTIFF that PLAINTIFF was required to be on
8 call, available and answer her phone as needed twenty-four hours a day, seven (7) days a week.
9 PLAINTIFF's meal periods were consistently interrupted and/or cut short due to lack of relief
10 workers available, having to respond to inquiries from staff members and /or having to attend to
11 other work tasks requiring immediate attention, such as, but not limited to, responding to tenant
12 complaints/answering tenant inquiries and/or other work tasks. PLAINTIFF estimates she was
13 rarely, if ever, afforded a full thirty-minute, uninterrupted, off duty, meal period before the end of
14 her fifth hour of work due to the nature of her job duties and/or pressure from management to work
15 through part or all of her unpaid breaks.

16 44. DEFENDANTS implemented policies and practices that failed to relieve
17 PLAINTIFF and Aggrieved Employees of all duties and DEFENDANTS' control during unpaid
18 meal breaks. For example, Aggrieved Employees were required to monitor and be responsive to
19 work communication devices, such as but not limited to, their cell phones which they were required
20 to answer as needed for work calls during purportedly off-duty meal periods. Furthermore, based
21 on information and belief, PLAINTIFF and Aggrieved Employees were required to remain on
22 DEFENDANTS' premises during any purported meal periods. As such, PLAINTIFF and
23 Aggrieved Employees remained subjected to DEFENDANTS' control during meal periods.

24 45. Based on information and belief, PLAINTIFF and Aggrieved Employees were
25 instructed by their supervisors to clock out for meal periods but to continue working during unpaid
26 meal periods. For example, PLAINTIFF was required to monitor her work phone during unpaid
27 meal periods and constantly had her meal periods interrupted with work-related calls/text messages
28 from her supervisor, yet PLAINTIFF's supervisor required PLAINTIFF clock out for at least half

1 an hour (usually at least 60 minutes) per day for these interrupted, on-duty and/or otherwise non-
2 compliant meal periods. Based on information and belief, other Aggrieved Employees were also
3 instructed by their supervisors to work during unpaid meal periods due to the nature of their work
4 and/or lack of relief workers available.

5 46. Aggrieved Employees were consistently suffered and permitted to take meal periods
6 past the fifth hour of work and/or had their meal periods interrupted and/or cut short/skipped
7 completely due to their need to complete work-related tasks, such as but not limited to, performing
8 maintenance/repair work and respond to tenant inquiries. For example, throughout the relevant
9 period, PLAINTIFF's meal periods were consistently interrupted, worked through completely
10 and/or late due to lack of coverage/relief workers, the nature of her job duties, and/or commentary
11 from supervisors pressuring her to work through meal periods. PLAINTIFF estimates her meal
12 periods were late, interrupted, cut short and/or worked through completely at least four (4) times per
13 week. On information and belief, other Aggrieved Employees were also unable to take timely, off-
14 duty meal periods of at least thirty minutes in length, due to the nature of their job, workload, and/or
15 lack of relief workers.

16 47. Moreover, based on information and belief, PLAINTIFF consistently took late meal
17 periods due to, including but not limited to, unaccounted for pre-shift work time. Based on
18 information and belief, other Aggrieved Employees were also suffered and/or permitted to take their
19 meal periods late/after the fifth hour of work due to, among other reasons, unaccounted for pre-shift
20 off-the-clock work tasks DEFENDANTS required.

21 48. Despite failing to provide lawful meal periods, DEFENDANTS implemented a
22 policy and/or practice of automatically deducting at least thirty minutes per shift for these
23 missed/unlawful meal periods, despite having actual and/or constructive knowledge that
24 PLAINTIFF and Aggrieved Employees did not receive compliant meal periods.

25 49. Based on information and belief, DEFENDANTS had actual and/or constructive
26 knowledge that DEFENDANTS' policies and practices resulted in the denial of timely,
27 uninterrupted, off-duty meal periods owed to PLAINTIFF and Aggrieved Employees, in violation
28 of California's meal period laws.

1 50. DEFENDANTS also failed to keep accurate records of the start and end times of
2 PLAINTIFF's and Aggrieved Employees' meal period start and end times. Based on further
3 information and belief, DEFENDANTS illegally rounded the start and end times of meal periods
4 resulting in Aggrieved Employees not being paid for all time worked as well as late and/or shortened
5 meal periods. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

12 52. PLAINTIFF is further informed and believes and thereon alleges that
13 DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-
14 deduction policies and practices resulted in the denial of meal periods owed to PLAINTIFF and
15 Aggrieved Employees, in violation of California's meal period laws.

16 53. Moreover, DEFENDANTS failed to provide a second meal break to PLAINTIFF
17 and Aggrieved Employees that worked shifts of more than ten hours. DEFENDANTS failed to
18 provide PLAINTIFF and Aggrieved Employees with a second, duty-free, uninterrupted, thirty-
19 minute meal period even though PLAINTIFF and Aggrieved Employees worked more than ten
20 hours in a workday and thus were entitled to a second duty-free, uninterrupted, thirty-minute meal
21 period before the end of the tenth hour of work. Per DEFENDANTS' unlawful meal period policies
22 and practices, DEFENDANTS only provided a single meal period per shift during shifts lasting
23 longer than ten and/or twelve hours and that single meal period was often non-compliant. For
24 example, PLAINTIFF at times worked shifts lasting over ten and/or twelve hours without being
25 provided any second meal period and her first meal period was often noncompliant.

26 54. Upon information and belief, DEFENDANTS failed to pay PLAINTIFF and
27 Aggrieved Employees, an additional hour of wages at their respective regular rates of compensation
28 for each workday a proper meal period was not provided. DEFENDANTS either failed to pay a

1 meal period premium at all for each workday a proper meal period was not provided and/or failed
2 to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration,
3 including but not limited to, commission pay, non-discretionary bonuses/incentive pay and/or other
4 non-discretionary compensation into the regular rate or compensation for purposes of calculating
5 the owed meal period premium.

6 **55. Rest Periods Violations.** DEFENDANTS did not authorize or permit PLAINTIFF
7 and Aggrieved Employees to take legally compliant rest periods at a rate of every four (4) hours
8 worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work
9 period, as required by law. PLAINTIFF and Aggrieved Employees were not adequately informed,
10 authorized, instructed about, nor permitted an opportunity to take legally compliant rest breaks.

11 **56.** PLAINTIFF and Aggrieved Employees were consistently unable to take a net, ten-
12 minute, off-duty rest period for every four (4) hours worked or major fraction thereof because of the
13 nature and constraints of their job duties and/or commentary from supervisors pressuring them to
14 take non-compliant rest breaks or skip rest breaks completely. Any purported rest periods would be
15 interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints
16 of other Aggrieved Employees' job duties, understaffing, and/or commentary from supervisors
17 pressuring them to skip rest breaks completely and/or take non-compliant rest breaks. For example,
18 PLAINTIFF was consistently forced to cut any rest breaks short or skip them completely due to the
19 nature of the work and/or lack of relief workers available to perform work tasks that had to be done
20 immediately, e.g, responding to inquiries/concerns from tenants/prospective tenants/staff members,
21 addressing property maintenance situations/filling maintenance orders and/or completing other
22 work tasks.

23 **57.** PLAINTIFF and Aggrieved Employees were pressured to complete their work duties
24 according to a designated schedule such that rest breaks were only taken once jobs were
25 completed/as time permitted. For example, PLAINTIFF typically worked at least 8 ½ hours
26 continuously in a workday without being provided two legally compliant rest periods. Based on
27 information and belief, Aggrieved Employees were pressured by their supervisors to skip/work
28 through their owed second rest periods and any first periods were usually non-compliant.

1 58. Based on information and belief, DEFENDANTS implemented policies and/or
2 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
3 during rest breaks. For example, DEFENDANTS required PLAINTIFF to remain on the worksite
4 premises and/or tethered to work-communication devices during any rest periods. As such,
5 PLAINTIFF and Aggrieved Employees remained under DEFENDANTS' control during any rest
6 periods, rendering said rest periods on duty and therefore noncompliant with California rest period
7 law.

8 59. Based on information and belief, DEFENDANTS did not have a compliant policy in
9 place nor instruction as to the taking, timing, or duty-free nature of rest periods. For example, based
10 on information and belief, DEFENDANTS failed to authorize and permit rest periods that were a
11 "net" ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all,
12 limited Aggrieved Employees to only ten-minute rest periods, requiring them to be back at their
13 workstations within ten minutes of leaving, in violation of California rest period law.
14 DEFENDANTS' failure to communicate that the rest period is a net ten minutes deprived Aggrieved
15 Employees of their rights to a full rest period, as such as policy only relieves Aggrieved Employees
16 from their workstation for ten minutes to travel to and from a rest area and be back at the workstation
17 by the end of that ten minutes. Based on further information and belief, DEFENDANTS failed to
18 maintain a company rest period policy and practice that authorized rest periods for every four hours
19 worked or *major fraction thereof*.

20 60. Despite not providing PLAINTIFF and Aggrieved Employees with all owed legally
21 compliant rest periods, DEFENDANTS failed to pay PLAINTIFF and Aggrieved Employees, an
22 additional hour of wages at their respective regular rates of pay for each workday a proper rest period
23 was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday
24 a proper rest period was not provided and/or failed to pay the proper rest period premium for failure
25 to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary
26 bonuses, commission pay, and/or other non-discretionary compensation into the regular rate of
27 compensation for purposes of calculating the owed rest period premium.

28 61. **Inaccurate Wage Statements.** DEFENDANTS failed to provide PLAINTIFF and

1 Aggrieved Employees with accurate wage statements that complied with Labor Code section 226.
2 DEFENDANTS provided wage statements that failed to indicate the total wages earned (including
3 meal and rest period premiums), and total hours worked by PLAINTIFF and Aggrieved Employees
4 (by virtue of the payment according to scheduled hours rather than actual hours worked, automatic
5 deduction for meal periods, time-rounding policies and practices and other off-the-clock work
6 policies and practices, all explained in greater detail above). Accordingly, DEFENDANTS violated
7 Labor Code section 226 by providing wage statements that were inaccurate and failed to include all
8 of the statutorily required information, including but not limited to, total hours worked.

9 62. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
10 statements to Aggrieved Employees that failed to list all applicable hourly rates in effect during the
11 pay period, due to, including but not limited to, failing to list an hourly rate/overtime rate at all
12 and/or failing to list the correct overtime rate because DEFENDANTS did not incorporate all non-
13 discretionary compensation, such as, but not limited to, non-discretionary bonuses/incentive pay,
14 commissions and/or other non-discretionary compensation into the regular pay rate for purposes of
15 calculating the owed overtime rate.

16 63. Based on information and belief, DEFENDANTS issued wage statements to
17 Aggrieved Employees that did not list the beginning and end dates of the pay period for which wages
18 were being paid, in violation of Labor Code section 226(a). As a result, the wage statements
19 provided to Aggrieved Employees were not accurate and did not include all of the statutorily
20 required information, including but not limited to the inclusive dates of the period for which the
21 employee is paid.

22 64. In addition, based on information and belief, DEFENDANTS issued wage statements
23 to PLAINTIFF and Aggrieved Employees that failed to accurately list all deductions. As such, wage
24 statements issued to Aggrieved Employees did not have all the statutorily required information
25 under Labor Code section 226(a), including but not limited to, all deductions, the inclusive dates of
26 the pay period, total hours worked and all applicable hourly rates in effect during the pay period and
27 the corresponding number of hours worked at each hourly rate, in violation of Labor Code section
28 226(a).

1 65. Separately, based on information and belief, DEFENDANTS violated Labor Code
2 section 226 because the wage statements issued by DEFENDANTS failed to list the correct name
3 and address of the legal entity that is the employer. As a result, the wage statements provided to
4 PLAINTIFF and the Aggrieved Employees were not accurate and did not include all of the
5 statutorily required information, including but not limited to the name and address of the legal entity
6 that is the employer.

7 66. As a result, PLAINTIFF and Aggrieved Employees have suffered injury as they
8 could not easily determine whether they received all wages owed to them and whether they were
9 paid for all hours worked. Moreover, as a result of DEFENDANTS' failure to list the correct legal
10 entity that is the employer, PLAINTIFF and the Aggrieved Employees have suffered injury as there
11 was confusion as to which entity to contact regarding any question(s) they had about wages paid
12 and unpaid.

13 67. **Unreimbursed Business Expenses.** DEFENDANTS required PLAINTIFF and
14 Aggrieved Employees to incur business expenses as a direct consequence of the performance of
15 their job duties without providing reimbursement, in violation of Labor Code section 2802.

16 68. Based on information and belief, PLAINTIFF and Aggrieved Employees were
17 improperly required to provide and maintain work tools that are supposed to be the responsibility of
18 the employer.

19 69. Based on information and belief, DEFENDANTS shifted the costs of doing business
20 onto PLAINTIFF and Aggrieved Employees by requiring them to pay for business expenses,
21 including but not limited to, use of PLAINTIFF's and Aggrieved Employees' personal mobile
22 phones/mobile devices and/or personal computers. Based on information and belief,
23 DEFENDANTS did not reimburse Aggrieved Employees for all cell phone/mobile device and/or
24 data plan charges incurred in the performance of their job duties. For example, based on information
25 and belief, PLAINTIFF and Aggrieved Employees regularly received work-related calls and/or
26 messages to their personal phones from, including but not limited to, managers and/or supervisors,
27 staff members, and tenants, regarding, e.g., noise complaints and/or other tenant complaints,
28 scheduling, and other work tasks but did not receive any reimbursement and/or were not properly

1 reimbursed by DEFENDANTS for these business expenses PLAINTIFF and Aggrieved Employees
2 incurred as a direct consequence of the performance of their job duties. Moreover, at times,
3 DEFENDANTS required PLAINTIFF to download an employee time-keeping app on her personal
4 cell phone, but DEFENDANTS failed to reimburse PLAINTIFF for the costs associated with the
5 personal cell phone use, in violation of Labor Code section 2802. Based on information and belief,
6 DEFENDANTS also required other Aggrieved Employees to download various applications on
7 their personal cell phones and/or otherwise use their personal mobile devices in the performance of
8 their job duties without providing any/proper reimbursement for this personal cell phone/mobile
9 device use.

10 70. Based on information and belief, Aggrieved Employees incurred expenses associated
11 with being required to use their personal vehicles for work without receiving any and/or full
12 reimbursement from DEFENDANTS for the costs they incurred in connection therewith. For
13 example, DEFENDANTS required PLAINTIFF to drive her personal vehicle between
14 DEFENDANTS' various locations/complexes throughout PLAINTIFF's workday to complete jobs
15 at the various locations and further required PLAINTIFF to use her personal vehicle for additional
16 business purposes, such as but not limited to, going to the bank, dropping off items at
17 DEFENDANTS' various properties, attending training meetings, among other job duties, without
18 reimbursing PLAINTIFF for all vehicle-related expenses PLAINTIFF incurred as a direct
19 consequence thereof, including but not limited to, gas, mileage, and vehicle wear and tear. Based
20 on information and belief, at times, DEFENDANTS purported to compensate PLAINTIFF for some
21 vehicle-related expenses, but the amount offered fell far below the Internal Revenue Service (IRS)
22 mandated per mile compensation for the relevant time period and/or otherwise failed to compensate
23 PLAINTIFF for all reasonable vehicle-related expenses she was required to incur in performing her
24 job. DEFENDANTS' failure to provide PLAINTIFF and Aggrieved Employees with full
25 reimbursement for all reasonable expenses associated with carrying out her duties required
26 PLAINTIFF and Aggrieved Employees to subsidize and/or carry the burden of business expenses
27 in violation of Labor Code section 2802.

28 71. As a pattern and practice, DEFENDANTS regularly failed to reimburse and

1 indemnify PLAINTIFF and Aggrieved Employees for business expenses. Pursuant to California
2 Labor Code section 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed
3 for all reasonable expenses associated with carrying out orders by DEFENDANTS and/or carrying
4 out the duties assigned by DEFENDANTS.

5 72. DEFENDANTS' failure to provide PLAINTIFF and Aggrieved Employees with full
6 reimbursement for all reasonable expenses associated with carrying out their duties required that
7 PLAINTIFF and Aggrieved Employees subsidize and/or carry the burden of business expenses in
8 violation of Labor Code section 2802.

9 73. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
10 information and belief, DEFENDANTS failed to timely pay PLAINTIFF and Aggrieved Employees
11 all wages that were due and owing upon termination or resignation. Based on information and belief,
12 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
13 requirements of Labor Code sections 201-202.

14 74. Upon separation of employment, Aggrieved Employees' final paychecks were not
15 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
16 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
17 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
18 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
19 accrued rates.

20 75. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
21 engaged in these same herein described unlawful practices with regard to all of the Aggrieved
22 Employees and that DEFENDANTS applied these same herein described unlawful practices to all
23 of its employees that it applied to PLAINTIFF.

24 76. **Sick Leave Violations:** DEFENDANTS violated California's paid sick leave laws
25 including, Labor Code sections 245-248.5; DEFENDANTS failed to provide proper sick leave to
26 Aggrieved Employees, due to, including but not limited to, DEFENDANTS' failure to account for
27 the actual hours worked by virtue of DEFENDANTS' failure to relieve Aggrieved Employees of all
28 duties and employer control during any unpaid meal periods, mandated pre-shift/post-shift off-the-

1 clock work, payment according to scheduled hours rather than actual time worked and time-
2 rounding policies and practices, as described herein, and or DEFENDANT'S failure to incorporate
3 all forms of non-discretionary remuneration, including but not limited to, non-discretionary
4 bonuses/incentive pay, commission pay and/or shift differential pay, and/or other non-discretionary
5 compensation into the sick pay calculation. DEFENDANTS further failed to put the Aggrieved
6 Employees on notice of their paid sick leave rights - or thereby putting their entitlement to sick leave
7 in a Labor Code section 2810.5 notice. DEFENDANTS failed to maintain accurate records
8 documenting the hours worked and paid sick days accrued and used by the Aggrieved Employees,
9 in violation of Labor Code section 247.5. DEFENDANTS failed to provide notice of the accrued
10 sick leave amount or balance left for the Aggrieved Employees by failing to provide Aggrieved
11 Employees with a wage statement or separate writing showing the balance of accrued or available
12 sick leave, or paid time off leave provided in lieu of sick leave, on their designated pay dates with
13 the their payment of wages, as required under Labor Code section 246, and thus affected Aggrieved
14 Employees' intelligent exercise of their paid sick leave. But for this failure, Aggrieved Employees
15 who are no longer employed with DEFENDANTS would have used their paid sick leave at least
16 prior to their respective separations, or on several occasions after receiving notice of the available
17 sick leave.

18 **77. Failure to Provide Supplemental Paid Sick Leave.** Labor Code section 248.2
19 provides that all employers with 26 or more employees are required to provide up to 80 hours
20 for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for
21 themselves, to care for a family member or if it is vaccine-related. Based on information and
22 belief, DEFENDANTS violated Labor Code section 248.2 by not providing Aggrieved
23 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

24 **78. Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
25 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
26 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
27 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
28 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

1 **79. Record Keeping Violations.** California Labor Code § 1174 requires employers to
2 keep “accurate and complete” payroll records showing, among other things, the hours worked daily
3 by all non-exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep
4 time records reflecting the times during which all owed meal periods were provided each day.

5 **80.** Due to DEFENDANTS’ automatic meal break deductions, failure to relieve
6 employees of all duties and employer control during meal periods, time rounding and/or payment
7 according to scheduled hours rather than actual hours worked, and other off-the-clock work policies
8 and practices described above, DEFENDANTS failed, and continue to fail, to keep accurate and
9 complete records as required by law, including but not limited to the following records: total daily
10 hours worked, applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved
11 Employees began and ended each work period, time records of meal periods, shift start times and
12 end times, and accurate itemized wage statements.

13 **81.** Moreover, based on information and belief, DEFENDANTS failed to keep accurate
14 records and issue accurate wage statements by not showing total wages paid each payroll period,
15 including value of board, lodging or other compensation furnished to Aggrieved Employees.

16 **82.** DEFENDANTS’ failure to keep “accurate and complete” payroll records for
17 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
18 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
19 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
20 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
21 period during which the referenced statutes and Wage Order provisions were violated.¹

22 **83. Standard Conditions of Labor Violations.** DEFENDANTS’ unlawful policies and
23 practices described herein also resulted in violations of Labor Code Sections 1198 and 1199, which
24 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “in addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,
2 and 1198, or order or ruling of the commission.

3 84. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
4 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and
5 unreimbursed business expenses result in separate violations of sections 1198 and 1199.

6 85. **Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
7 Code section 216 by failing to pay PLAINTIFF and Aggrieved Employees for all hours worked at
8 the proper wage rate and by failing to pay PLAINTIFF and Aggrieved Employees an additional
9 hour of pay for each meal/rest period not provided or that was otherwise unlawful. *Gould v.*
10 *Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

11 86. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
12 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
13 to said employee.” Based on information and belief, DEFENDANTS made unlawful deductions
14 from Aggrieved Employees’ paychecks during the relevant period, including but not limited to
15 deducting costs advanced by DEFENDANTS from Aggrieved Employees’ final paychecks as well
16 as deductions for purported overpayments from prior pay periods and/or improper deductions for
17 lodging and/or deductions for negligently broken/damaged company property. Such a practice is in
18 violation of including but not limited to, Labor Code Sections 221-222 which subjects
19 DEFENDANTS to civil penalties under Labor Code Section 2699.

20 87. **Statutory Wage Violations.** As described above, DEFENDANTS willfully and
21 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
22 for all hours worked which resulted in the payment of less than the statutorily required wages owed
23 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
24 not limited to, overtime wages and minimum wages, to which they were entitled to under California
25 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
26 Aggrieved Employees lower wages than those they were entitled to while purporting that
27 PLAINTIFF and other Aggrieved Employees were properly paid.

28 88. **Failure to Compensate for Nonproductive Time.** Labor Code section 226.2

1 requires an employer to pay employees compensated on a piece-rate basis separately for rest
2 and recovery periods and nonproductive time, apart from any piece-rate pay. This statute
3 further requires an employer to include on the wage statements for these employees the total
4 hours of compensable rest and recovery period, the total hours for other non-productive time,
5 the rates of compensation for these hours, and the gross wages paid for these hours. In addition,
6 the statute requires that employees shall be compensated for rest and recovery periods at a
7 regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
8 dividing the total compensation for the workweek, exclusive of compensation for rest and
9 recovery periods and any premium compensation for overtime, by the total hours worked
10 during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum
11 wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a
12 commission basis.

13 89. During the relevant period, DEFENDANTS failed to comply with Labor Code
14 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to
15 compensate Aggrieved Employees who were paid on a piece rate and or commission basis
16 separately for the rest periods and nonproductive time, and/or failed to pay them for this time
17 at the correct rates. Based on information and belief, DEFENDANTS further failed to include
18 the information on these employees' wage statements required by this statute.

19 90. **Untimely Payment of Final Wages.** DEFENDANTS failed to timely Aggrieved
20 Employees all wages that were due and owing upon termination or resignation. Labor Code sections
21 201 and 202, together require employers to pay all wages immediately upon discharge and/or within
22 72 hours of an employees' resignation. Upon separation of employment, Aggrieved Employees'
23 final paychecks were not timely provided. Based on information and belief, DEFENDANTS did not
24 pay final wages in accordance with the timing requirements set forth in Labor Code sections 201
25 and 202. Based on information and belief, DEFENDANTS provide final wages to Aggrieved
26 Employees on the regular pay day without regard to the timing requirements of Labor Code sections
27 201-202.

28 91. Moreover, upon separation of employment, Aggrieved Employees' final paychecks,

1 once provided, did not include all wages owed as they were devoid of, including but not limited to,
2 all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed paid time
3 off wages at the properly accrued rates. DEFENDANTS also willfully failed to timely pay all wages
4 upon separation of employment because it was not paying sick pay at the appropriate rates due to,
5 including but not limited to, failing to incorporate all non-discretionary compensation into the sick
6 pay calculation.

7 92. **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5,**
8 **and 432.** *Time and Pay Records:* Labor Code section 226 and all applicable IWC Wage Orders,
9 section 7 require that employers keep the following information on file for each employee for a
10 minimum of three years: The employee's dates of employment; the employee's hourly rates and the
11 corresponding number of hours worked by the employee at each hourly rate, when the employee
12 begins and ends each work period (including meal periods) and split intervals; total hours worked
13 by the employee; all deductions; gross wages earned; and net wages earned.

14 93. Section (b) of Labor Code section 226 further requires employers to "afford current
15 and former employees the right to inspect or receive a copy of records pertaining to their
16 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
17 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
18 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
19 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
20 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
21 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
22 the employer. Lab. Code section 226(f).

23 94. *Personnel Records.* In addition to their right to time and pay records, employees, and
24 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
25 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
26 section 432 further specifies that employers must furnish copies of all employment records bearing
27 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
28 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days

1 from the date the employer receives a written request.” An employer’s failure to comply within this
2 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
3 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

4 95. Based on information and belief, DEFENDANTS fail to produce or make available
5 Aggrieved Employees’ personnel records and/or payroll records when requested pursuant to Labor
6 Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on or about
7 January 13, 2022, PLAINTIFF sent a request for payroll and personnel records to DEFENDANTS.
8 Yet, based on information and belief, DEFENDANTS failed to produce/make available
9 PLAINTIFF’s complete records within the time periods delineated by California labor law.
10 PLAINTIFF sent a follow-up request for her personnel and payroll records on or about February 23,
11 2022, yet, DEFENDANTS failed to produce/make available the requested records. Based on
12 information and belief, DEFENDANTS failed to produce/make available any records at all within
13 the time periods delineated by California labor law. Based on information and belief,
14 DEFENDANTS failed and continues to fail to timely produce complete payroll and personnel
15 records when requested by other Aggrieved Employees. These violations subject DEFENDANTS
16 to penalties under Labor Code sections 226, 1198.5, and 2699.

17 96. **Unlawful Inquiries into Salary History:** Based on information and belief,
18 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal
19 their salary history when applying for employment with DEFENDANTS, in violation of Labor Code
20 section 432.3. Moreover, by requiring Aggrieved Employees to disclose prior salary information
21 in a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
22 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
23 obtaining employment with DEFENDANTS, in violation of California law.

24 97. **False Representations About Employment to Induce Relocation.** Labor Code
25 section 970 prohibits an employer from knowingly making false representations about the nature or
26 existence of work, continued employment and/or compensation to induce an employee to
27 move/relocate in reliance thereon. Specifically, Labor Code section 970 provides:

28 No person, or agent or officer thereof, directly or indirectly, shall influence,

1 persuade, or engage any person to change from one place to another in this
2 State or from any place outside to any place within the State, or from any place
3 within the State to any place outside, for the purpose of working in any branch
4 of labor, through or by means of knowingly false representations, whether spoken,
5 written, or advertised in printed form, concerning either:

6 (a) The kind, character, or existence of such work;

7 (b) The length of time such work will last, or the compensation therefor;

8 98. Based on information and belief, DEFENDANTS had and have a policy and practice
9 of knowingly making false representations to Aggrieved Employees regarding obtaining/continued
10 employment, the nature of work to be performed and/or the terms of their compensation to influence,
11 persuade or engage its employees to relocate/move for purposes of employment, in violation of
12 California law, including but not limited to, Labor Code section 970.

13 99. **Failure to Provide Commission Agreements:** Labor Code section 2751 requires
14 that all commission contracts "be in writing and . . . set forth the method by which the commissions
15 shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers
16 must also "give a signed copy of the contract to every employee who is a party [to the contract] and
17 . . . obtain a signed receipt for the contract from each employee." Id. section 2751(b).

18 100. Based on information and belief, DEFENDANTS failed to provide Aggrieved
19 Employees who were compensated on a commission basis with proper written commission
20 agreements, in violation of Labor Code section 2751.

21 101. **Unlawful Agreements/Unlawful Background Checks/Unlawful Criminal**
22 **History Inquiries.** Based on information and belief, DEFENDANTS required PLAINTIFF and
23 other Aggrieved Employees to agree in writing to unlawful conditions of employment, such as, but
24 not limited to, unlawful criminal and/or financial checks, unlawful confidentiality agreements,
25 unlawful waivers of representative actions, unlawful commission agreements, unlawful lodging
26 agreements, and/or unlawful non-compete agreements as a condition of obtaining and/or continuing
27 employment in violation of Labor Code section 432.5. Based on further information and belief,
28 DEFENDANTS also required PLAINTIFF to agree in writing to unlawful background checks not

1 in conformity with the requirements of Investigative Consumer Reporting Agencies Act, Civil Code
2 sections 1786, et seq. ("ICRAA") and/or the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et
3 seq. ("FCRA"), in violation of Labor Code section 432.5. Based on information and belief,
4 DEFENDANTS asked about arrests not resulting in convictions on its employment application, in
5 violation of Labor Code section 432.7 and or otherwise unlawfully asked about criminal
6 history/unlawfully required the disclosure of criminal history prior to extending a conditional offer
7 of employment and required PLAINTIFF and other Aggrieved Employees to agree in writing to the
8 unlawful disclosures as a condition of employment, in violation of Labor Code section 432.5

9 **FIRST CAUSE OF ACTION**

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

11 **2698, ET SEQ.**

12 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all**
13 **Defendants)**

14 102. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 103. **Meal Period Violations.** California law requires employers to provide employees a
16 duty-free, uninterrupted, thirty-minute meal period when an employee works more than five (5)
17 hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab.
18 Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant*
19 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Upon information and belief, PLAINTIFF did not
20 sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

21 104. Employers must also provide employees with a second duty-free, uninterrupted
22 thirty-minute meal period when an employee works more than (10) hours in a workday, and it must
23 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
24 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
25 hours but no more than six (6) hours, the required meal period may be waived by mutual consent of
26 the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
27 hours but no more than twelve (12) hours, the required second meal period may be waived by mutual
28 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

1 105. Employers covered by any and all applicable IWC Wage Orders have an obligation
2 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
3 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
4 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
5 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
6 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
7 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
8 provided”).

9 106. Employers must pay employees an additional hour of wages at the employees’
10 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
11 meal period, first meal period provided after five (5) hours, second meal period provided after 10
12 hours). Lab. Code section 226.7; all applicable IWC Wage Orders, section 11(B) (“If an employer
13 fails to provide an employee a meal period in accordance with the applicable provision of this Order,
14 the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
15 compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th
16 1004.

17 107. DEFENDANTS have a consistent policy and/or practice of not providing lawful
18 meal periods to PLAINTIFF and Aggrieved Employees and/or providing compensation in lieu
19 thereof. As explained above, PLAINTIFF and other Aggrieved Employees were consistently unable
20 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
21 forced to take late meal periods, interrupted meal periods and/or work through part or all their
22 purported meal periods. Moreover, DEFENDANTS failed to keep accurate records of meal period
23 start and end times.

24 108. Based on information and belief, DEFENDANTS rounded the start and end times of
25 employees’ meal periods and/or automatically deducted thirty minutes per shift despite having
26 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
27 receive compliant meal periods.

28 109. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal

1 periods in violation of California law or failed to pay the proper meal period premium for failure to
2 incorporate all non-discretionary remuneration including but not limited to, non-discretionary
3 bonuses/incentive pay, commissions, and/or shift differential pay and/or other non-discretionary
4 compensation into the regular rate of compensation for purposes of calculating the owed meal period
5 premium.

6 110. These unlawful meal period policies and practices result in violations of Labor Code
7 sections 226.7, 512, and 1198-1199, and all applicable wage orders, section 11. These violations
8 subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1 and 2699, and all
9 applicable Wage Orders, section 20. These practices result in further violations such as violations
10 of Labor Code section 1174 as discussed above, 1198-1199, 226.6 and other violations discussed
11 below.

12 111. **Rest Period Violations.** Labor Code section 226.7 and all applicable IWC Wage
13 Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net
14 minutes for every four hours worked or major fraction thereof. Such rest periods must be in the
15 middle of the four-hour period "insofar as practicable." In *Brinker v. Restaurant Corp. v. Superior*
16 *Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a
17 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for
18 shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10
19 hours up to 14 hours. (Id. at 1029). The rest period requirement obligates employers to permit and
20 authorize employees to take off-duty rest periods, meaning employers must relieve employees of all
21 duties and relinquish control over how employees spend their time. *Augustus v. ABM Security*
22 *Services, Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the
23 employer must pay the employee one hour of pay at the employee's regular rate of compensation
24 for each workday the employer did not provide at least one legally required rest period, pursuant to
25 Labor Code section 226.7, and all applicable IWC Wage Orders, section 12(B).

26 112. As explained above, DEFENDANTS did not properly authorize and provide
27 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
28 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the

1 middle of the work period, as required by law. Any purported rest periods were consistently
2 interrupted, cut short, on duty, restricted to premises and/or late.

3 113. Moreover, based on information and belief, DEFENDANTS failed to pay
4 PLAINTIFF and other Aggrieved Employees an additional hour of pay at PLAINTIFF's and other
5 Aggrieved Employees' respective regular rates of compensation for each missed or improper rest
6 period. DEFENDANTS either failed to may any rest period premium at all or failed to pay the
7 proper rest period premium for failure to incorporate all non-discretionary remuneration including
8 but not limited to, non-discretionary bonuses/incentive pay, commission pay and/or shift differential
9 pay and/or other non-discretionary compensation into the regular rate of compensation for purposes
10 of calculating the owed rest period premium.

11 114. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
12 all applicable IWC Wage Orders, section 12. These violations subject DEFENDANTS to civil
13 penalties under Labor Code sections 558 and 2699, and all applicable Wage Orders, section 20.

14 115. **Unpaid Minimum and Overtime Wages.** California law provides that employees
15 in California must be paid for all hours worked, up to forty per week or eight (8) per day, at a regular
16 rate that is no less than the mandated minimum wage. See Labor Code section 1197 and the
17 applicable Wage Order. The minimum wage standard applies to each hour employees worked for
18 which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by
19 an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or
20 not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135
21 Cal.App.4th 314, 324.

22 116. California law also provides that employees in California must be paid overtime,
23 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
24 week or 8 hours per day. See Labor Code section 510 and the applicable Wage Order section 3.
25 Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked
26 beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the
27 seventh consecutive day of work in a work week. *Ibid.*

28 117. PLAINTIFF and other Aggrieved Employees were non-exempt employees who

1 regularly worked time for which they were not compensated, resulting in unpaid minimum wages
2 as well as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)
3 hours per week or more than eight (8) hours in a workday or seven (7) consecutive days in a
4 workweek. Aggrieved Employees who worked more than twelve hours in a workday or more than
5 eight (8) hours on the seventh consecutive day of work in a workweek were also denied "double
6 time" wages due to, including but not limited to, DEFENDANTS' failure to relieve Aggrieved
7 Employees of all duties and employer control during any unpaid meal periods, rounded time entries
8 and payment of wages according to scheduled hours worked rather than actual time worked and
9 other policies and practices mandating off-the-clock work as described herein.

10 118. As explained above, DEFENDANTS failed to compensate PLAINTIFF and other
11 Aggrieved Employees for all hours worked by virtue of DEFENDANTS' automatic deductions and
12 time rounding policies, payment according to scheduled hours worked instead of actual time
13 worked, mandated pre-shift/post shift/ and/or other off-the-clock work policies and/or practices and
14 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
15 unlawful practices for missed or improper meal periods. This regular performance of off-the-clock
16 work resulted in the underpayment of minimum wages owed to Aggrieved Employees, the
17 underpayment of overtime wages for those Aggrieved Employees who worked more than eight (8)
18 hours per workday or more than forty per week, the underpayment of "double time" wages for those
19 Aggrieved Employees who worked more than twelve (12) hours per workday or more than eight (8)
20 hours on the seventh consecutive day of work, as well as record-keeping violations. Moreover,
21 based on information and belief, DEFENDANTS further violated California minimum wage laws
22 by failing to pay the applicable state and/or local minimum wage rate for all hours worked and by
23 failing to compensate for non-productive time, for those Aggrieved Employees compensated on a
24 piece rate and/or commission basis.

25 119. Based on information and belief, DEFENDANTS further violated California's
26 overtime wage laws by, including but not limited to, failing to incorporate all non-discretionary
27 compensation, including but not limited to, non-discretionary bonus compensation/incentive pay
28 and/or shift differential pay and/or other non-discretionary compensation into the regular pay rate

1 used to calculate the overtime rate of pay. Failing to include all non-discretionary compensation into
2 the regular pay rate used to calculate the owed overtime rate resulted in a miscalculation of the
3 overtime wage rate, resulting in the underpayment of overtime (and “double time”) wages owed to
4 Aggrieved Employees.

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

15 121. DEFENDANTS knew or had reason to know Aggrieved Employees were working
16 during unpaid meal periods, prior to clocking in/after clocking out/ otherwise working off-the-clock
17 and not being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to
18 provide PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the
19 wage statements provided by DEFENDANTS do not accurately reflect, inter alia, the correct total
20 hours worked. Due to, including but not limited to, DEFENDANTS’ time-rounding and auto-
21 deduction policies and practices, payment according to scheduled hours rather than actual hours
22 worked, and other mandated off-the-clock work policies and practices described herein,
23 DEFENDANT’S wage statements fail to reflect the true total hours worked by PLAINTIFF and the
24 Aggrieved Employees worked, as required under Labor Code section 226(a). Failure to list all hours
25 worked on a wage statement, gives rise to an inference of injury under Labor Code section 226
26 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

27 122. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
28 statements to Aggrieved Employees that failed to list all applicable hourly rates in effect during the

1 pay period, due to, including but not limited to, failing to list an hourly rate/overtime rate at all
2 and/or failing to list the correct overtime rate because DEFENDANTS did not incorporate all non-
3 discretionary compensation, such as, but not limited to, non-discretionary bonuses/incentive pay,
4 commissions, and/or shift differential pay and/or other non-discretionary compensation into the
5 regular pay rate for purposes of calculating the owed overtime rate.

6 123. DEFENDANTS' failure to accurately list, including but not limited to, all hours
7 worked on all wage statements caused confusion to PLAINTIFF and caused and continues to cause
8 confusion to other Aggrieved Employees over whether they received all wages owed to them.

9 124. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
10 they could not easily determine whether they received all wages owed to them and whether they
11 were paid for all hours worked.

12 125. In addition, based on information and belief, DEFENDANTS issued wage statements
13 to PLAINTIFF and Aggrieved Employees that failed to accurately list all deductions.

14 126. Separately, and independent of the above allegation, based on information and belief,
15 DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees further violate
16 Labor Code section 226(a), by failing to list the correct name and address of the legal entity that is
17 the employer.

18 127. Separately, based on information and belief, DEFENDANTS failed to list the
19 inclusive dates of the pay period on wage statements issued to PLAINTIFF and other Aggrieved
20 Employees, in violation of Labor Code section 226(a).

21 128. These violations subject DEFENDANTS to civil penalties under Labor Code section
22 226. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay
23 period during which the statute provisions were violated. ²

24 129. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave
25 laws including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to
26 provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
27 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (by

28 ² Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 virtue of DEFENDANTS' meal period auto-deduction and time rounding practices and off-the-
2 clock work described herein), and/or failure to incorporate all forms of non-discretionary
3 remuneration into the sick pay calculation.

4 130. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved
5 Employees notice of their paid sick leave rights - or thereby putting their entitlement to sick
6 leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain
7 accurate records of used sick leave and the balance of paid sick leave left to the employees,
8 which affected PLAINTIFF and Aggrieved Employees' intelligent exercise of their paid sick
9 leave.

10 131. But for this failure, PLAINTIFF and other Aggrieved Employees would have
11 used their paid sick leave at least prior to their respective separations, for as on several
12 occasions thereafter, he or she would have been entitled to use the banked sick leave and earn
13 appropriate compensation.

14 132. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain
15 records documenting the hours worked and paid sick days accrued and used by PLAINTIFF
16 and all Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved
17 Employees were entitled to the maximum number of hours accruable.

18 133. Upon information and belief, DEFENDANTS failed and continue to fail to
19 comply with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved
20 Employees with a Labor Code section 226 wage statement, or separate writing containing the
21 amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
22 leave, at the time it pays wages.

23 134. These practices violated California's sick leave laws, Labor Code section 245, et
24 seq.

25 135. On information and belief, PLAINTIFF alleges that all of these practices were
26 experienced and continue to be experienced by other Aggrieved Employees.

27 136. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA,
28 including but not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as

1 permitted by law.

2 **137. Failure To Provide Supplemental Paid Sick Leave.** Labor Code section 248.2
3 provides that all employers with 26 or more employees are required to provide up to 80 hours
4 for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for
5 themselves, to care for a family member or if it is vaccine-related. Based on information and
6 belief, DEFENDANTS violated Labor Code section 248.2 by not providing Aggrieved
7 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

8 **138. Failure to Pay Vested Vacation/Paid Time Off:** California Labor Code section
9 227.3 provides that when an employer policy provides for paid vacations and/or paid time off,
10 and an employee is terminated without having taken off his, her, or their vested vacation time,
11 all vested vacation shall be paid to the employee as wages at the employee's final rate in
12 accordance with such contract of employment or employer policy respecting eligibility or time
13 served and that there shall be no forfeiture of vested vacation time or paid time off upon
14 termination. Based on information and belief, DEFENDANTS had and continue to have a
15 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
16 vacation/paid time off during their employment and/or failing to pay all vested, accrued paid
17 time off to Aggrieved Employees upon separation of employment, in violation of California
18 law, including but not limited to, Labor Code section 227.3.

19 **139. Record-Keeping Violations.** California Labor Code sections 226 and 1174
20 require DEFENDANTS to keep "accurate and complete" payroll records showing, among other
21 things, the hours worked daily by all non-exempt employees. Section 7 of all applicable IWC
22 Wage Orders similarly requires employer to keep time records showing, inter alia, when the
23 employees begin and end each work period and reflecting the true start and end times during
24 which all owed meal periods are provided each day. At all relevant times, DEFENDANTS have
25 failed, and continue to fail, to keep the required time records, as DEFENDANTS have failed to
26 record the true start and end times of PLAINTIFF's and other Aggrieved Employees' workdays
27 and failed to record PLAINTIFF's and other Aggrieved Employees' meal periods. Moreover,
28 based on information and belief, DEFENDANTS failed to keep accurate records and issue accurate

1 wage statements by not showing total wages paid each payroll period, including value of board,
2 lodging or other compensation furnished to Aggrieved Employees. DEFENDANTS' failure to
3 keep "accurate and complete" payroll records for PLAINTIFF and the Aggrieved Employees
4 violates Labor Code sections 1174, 1198-99, and Section 7 of all applicable IWC Wage Orders.
5 These violations subject DEFENDANTS to civil penalties under the Labor Code, including
6 without limitation sections 1174.5 and 2699. Each violation of each Labor Code section and
7 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

8 140. **Unreimbursed Business Expenses.** California law requires employers to
9 indemnify their employees for all necessary expenditures incurred by the employee in direct
10 consequence of the discharge of their duties or of their obedience to the directions of the
11 DEFENDANTS. See Cal. Lab. Code section 2802(a) and all applicable Wage Orders, section
12 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses'
13 shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the
14 employee enforcing the rights granted by this section." Cal. Lab. Code section 2802(c).
15 Moreover, "any contract or agreement, express or implied, made by any employee to waive the
16 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
17 employee or his personal representative of any right or remedy to which he is entitled to under
18 the laws of this State." See Cal. Lab. Code section 2804. Among other things, under California
19 law, when tools or equipment are required by the employer or are necessary to the performance
20 of a job, such tools and equipment shall be provided and maintained by employer, except that
21 an employee whose wages are at least two (2) times the minimum wage provided herein may
22 be required to provide and maintain hand tools and equipment customarily required by the trade
23 or craft. See applicable IWC Wage Order, section 9 (b). Among other things, under California
24 law, when employees must use their personal cellphones for work-related purposes, the
25 employer must reimburse them for a reasonable percentage of their cell phone bills. See
26 *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show
27 liability, an employee will only need to show that he or she was required to use their personal
28 cellphone for work-related purposes and not reimbursed for the use. Id. 1144-1145.

1 141. On information and belief, at all relevant times hereto, DEFENDANTS shifted
2 their costs of doing business onto Aggrieved Employees by requiring them to pay for its
3 business expenses, including but not limited to, use of PLAINTIFF's and other Aggrieved
4 Employees' personal mobile phones/mobile devices and/or personal computers. Based on
5 information and belief, DEFENDANTS did not reimburse Aggrieved Employees for all cell
6 phone/mobile device and/or data plan charges incurred in the performance of their job duties. For
7 example, based on information and belief, PLAINTIFF and other Aggrieved Employees regularly
8 received work-related calls and/or messages to their personal phones from, including but not limited
9 to, managers and/or supervisors, staff members, and tenants, regarding, e.g., noise complaints and/or
10 other tenant complaints, scheduling, and other work tasks but did not receive any reimbursement
11 and/or were not properly reimbursed by DEFENDANTS for these business expenses PLAINTIFF
12 and Aggrieved Employees incurred as a direct consequence of the performance of their job duties.
13 Moreover, at times, DEFENDANTS required PLAINTIFF to download an employee time-keeping
14 app on her personal cell phone, but DEFENDANTS failed to reimburse PLAINTIFF for the costs
15 associated with the personal cell phone use, in violation of Labor Code section 2802. Based on
16 information and belief, DEFENDANTS also required other Aggrieved Employees to download
17 various applications on their personal cell phones and/or otherwise use their personal mobile devices
18 in the performance of their job duties without providing any/proper reimbursement for this personal
19 cell phone/mobile device use.

20 142. Based on information and belief, Aggrieved Employees incurred expenses associated
21 with being required to use their personal vehicles for work without receiving any and/or full
22 reimbursement from DEFENDANTS for the costs they incurred in connection therewith. For
23 example, DEFENDANTS required PLAINTIFF to drive her personal vehicle between
24 DEFENDANTS' various locations/complexes throughout PLAINTIFF's workday to complete jobs
25 at the various locations and further required PLAINTIFF to use her personal vehicle for additional
26 business purposes, such as but not limited to, going to the bank, dropping off items at
27 DEFENDANTS' various properties, attending training meetings, among other job duties, without
28 reimbursing PLAINTIFF for all vehicle-related expenses PLAINTIFF incurred as a direct

1 consequence thereof, including but not limited to, gas, mileage, and vehicle wear and tear. Based
2 on information and belief, at times, DEFENDANTS purported to compensate PLAINTIFF for some
3 vehicle-related expenses, but the amount offered fell far below the Internal Revenue Service (IRS)
4 mandated per mile compensation for the relevant time period and/or otherwise failed to compensate
5 PLAINTIFF for all reasonable vehicle-related expenses she was required to incur in performing her
6 job. DEFENDANTS' failure to provide PLAINTIFF and Aggrieved Employees with full
7 reimbursement for all reasonable expenses associated with carrying out her duties required
8 PLAINTIFF and Aggrieved Employees to subsidize and/or carry the burden of business expenses
9 in violation of Labor Code section 2802.

10 143. Based on information and belief, Aggrieved Employees were improperly required to
11 provide and maintain work tools that are supposed to be the responsibility of DEFENDANTS.

12 144. As a pattern and practice, DEFENDANTS regularly failed to reimburse and
13 indemnify PLAINTIFF and Aggrieved Employees for business expenses. Pursuant to California
14 Labor Code section 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed
15 for all reasonable expenses associated with carrying out orders by DEFENDANTS and/or carrying
16 out the duties assigned by DEFENDANTS.

17 145. DEFENDANTS' failure to provide Aggrieved Employees with full
18 reimbursement for all reasonable expenses associated with carrying out their duties required
19 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation
20 of Labor Code section 2802 and section 9 of all applicable IWC Wage orders. Accordingly,
21 this constitutes a PAGA violation based on violations of Labor Code section 2802 and section
22 9 of the applicable wage order.

23 146. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
24 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
25 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
26 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
27 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
28 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and

1 unreimbursed business expenses, result in separate violations of sections 1198 and 1199, which
2 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

3 147. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
4 employer's refusal to pay wages due and payable and/or DEFENDANTS' denial of the validity of
5 any claim to wages due. DEFENDANTS have violated this section by, inter-alia, failing to pay
6 PLAINTIFF and the Aggrieved Employees for all hours worked at the proper wage rate and by
7 failing to pay PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for
8 each meal or rest period not provided/that was invalid. These violations subject DEFENDANTS to
9 civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
10 each aggrieved employee, for each pay period during which the statute provisions were violated.

11 148. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
12 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
13 to said employee." Based on information and belief, DEFENDANTS made unlawful deductions
14 from Aggrieved Employees' paychecks during the relevant period, including but not limited to
15 deducting costs advanced by DEFENDANTS from Aggrieved Employees' final paychecks as well
16 as deductions for purported overpayments from prior pay periods and/or improper deductions for
17 lodging and/or deductions for negligently broken/damaged company property. Such a practice is in
18 violation of including but not limited to, Labor Code Sections 221-222 which subjects
19 DEFENDANTS to civil penalties under Labor Code Section 2699.

20 149. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
21 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
22 wages. As described above, DEFENDANTS willfully and systematically denied the Aggrieved
23 Employees minimum and overtime wage compensation for all hours worked which resulted in the
24 payment of less than statutorily required wages to them. DEFENDANTS acted with the intent to
25 deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages,
26 to which they were entitled to under California law.

27 150. **Failure to Compensate for Nonproductive Time.** Labor Code section 226.2
28 requires an employer to pay employees compensated on a piece-rate basis separately for rest

1 and recovery periods and nonproductive time, apart from any piece-rate pay. This statute
2 further requires an employer to include on the wage statements for these employees the total
3 hours of compensable rest and recovery period, the total hours for other non-productive time,
4 the rates of compensation for these hours, and the gross wages paid for these hours. In addition,
5 the statute requires that employees shall be compensated for rest and recovery periods at a
6 regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
7 dividing the total compensation for the workweek, exclusive of compensation for rest and
8 recovery periods and any premium compensation for overtime, by the total hours worked
9 during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum
10 wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a
11 commission basis.

12 151. During the relevant period, DEFENDANTS failed to comply with Labor Code
13 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to
14 compensate Aggrieved Employees who were paid on a piece rate and or commission basis
15 separately for the rest periods and nonproductive time, and/or failed to pay them for this time
16 at the correct rates. Based on information and belief, DEFENDANTS further failed to include
17 the information on these employees' wage statements required by this statute.

18 152. **Untimely Wages at Termination.** Labor Code section 201 requires DEFENDANTS
19 to pay all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
20 Code section 202 extends those provisions to employees who resign. For all Aggrieved Employees
21 no longer employed by DEFENDANTS, DEFENDANTS have an ongoing failure to pay such
22 aggrieved employees all wages earned and unpaid at the time of discharge or resignation, due to
23 DEFENDANTS' failure to pay, inter alia, all owed minimum wages, overtime wages, premium
24 wages, vacation pay, and sick leave wages and/or all paid time off at the properly accrued rates.
25 These violations subject DEFENDANTS to civil penalties under the Labor Code, including without
26 limitation Labor Code sections 203, 210, 256 and 2699. Each violation results in a separate civil
27 penalty, for each Aggrieved Employee for each pay period during which the statutory provisions
28 were violated.

1 **153. Failure to Produce Records.** Based on information and belief, DEFENDANTS
2 failed and continue to fail to produce or make available a current or former employee's personnel
3 records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432,
4 and/or the applicable Wage Order. For example, PLAINTIFF sent a request for payroll and
5 personnel records to DEFENDANTS. Yet, DEFENDANTS failed to produce complete records or
6 failed to produce any records at all within the time periods delineated by California labor law. Based
7 on information and belief, DEFENDANTS failed and continue to fail to timely produce complete
8 payroll and personnel records when requested by other Aggrieved Employees, resulting in violations
9 of Labor Code sections 226(b)-(c), 1198.5, and 432.

10 **154. Unlawful Inquiries into Salary History:** Based on information and belief,
11 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal
12 their salary history when applying for employment with DEFENDANTS. For example, based on
13 information and belief, Aggrieved Employees were required to fill out an application that requested,
14 among other things, the following information: Former employer's name, and "starting" and "final"
15 and/or "'Hrly. Rates/Salary" "Pay Rate" and reason for leaving and/or same or similar information,
16 in violation of Labor Code section 432.3. Moreover, by requiring Aggrieved Employees to disclose
17 prior salary information in a written application for employment, DEFENDANTS violated Labor
18 Code section 432.5 by requiring Aggrieved Employees to agree in writing to disclose their salary
19 history as a condition of obtaining employment with DEFENDANTS, in violation of California law.

20 **155. False Representations About Employment to Induce Relocation.** Labor Code
21 section 970 prohibits an employer from knowingly making false representations about the nature or
22 existence of work, continued employment and/or compensation to induce an employee to
23 move/relocate in reliance thereon. Specifically, Labor Code section 970 provides:

24 No person, or agent or officer thereof, directly or indirectly, shall influence,
25 persuade, or engage any person to change from one place to another in this
26 State or from any place outside to any place within the State, or from any place
27 within the State to any place outside, for the purpose of working in any branch
28 of labor, through or by means of knowingly false representations, whether spoken,

1 written, or advertised in printed form, concerning either:

2 (a) The kind, character, or existence of such work;

3 (b) The length of time such work will last, or the compensation therefor;

4 156. Based on information and belief, DEFENDANTS had and have a policy and practice
5 of knowingly making false representations to Aggrieved Employees regarding obtaining/continued
6 employment, the nature of work to be performed and/or the terms of their compensation to influence,
7 persuade or engage its employees to relocate/move for purposes of employment, in violation of
8 California law, including but not limited to, Labor Code section 970.

9 157. **Failure to Provide Commission Agreements:** Labor Code section 2751 requires
10 that all commission contracts "be in writing and . . . set forth the method by which the commissions
11 shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers
12 must also "give a signed copy of the contract to every employee who is a party [to the contract] and
13 . . . obtain a signed receipt for the contract from each employee." Id. section 2751(b).

14 158. Based on information and belief, DEFENDANTS failed to provide Aggrieved
15 Employees who were compensated on a commission basis with proper written commission
16 agreements, in violation of Labor Code section 2751.

17 159. **Background Check Violations/Unlawful Agreements/Unlawful Inquiries into**
18 **Criminal History.** Labor Code section 432.5 provides that "no employer...shall require any
19 employee or applicant for employment to agree, in writing, to any term or condition which is known
20 by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS
21 required PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of
22 employment, such as, but not limited to, unlawful criminal and/or financial checks, unlawful
23 confidentiality agreements, unlawful waivers of representative actions, unlawful commission
24 agreements, unlawful lodging agreements, and/or unlawful non-compete agreements as a condition
25 of obtaining and/or continuing employment in violation of Labor Code section 432.5.

26 160. The California Labor Code places certain procedural and substantive limits on an
27 employer's ability to conduct employee background checks and on how employers can use the
28 information they obtain through these background checks. Upon information and belief,

1 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit or agree to submit
2 to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
3 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
4 and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in
5 writing to unlawful background checks not in conformance with the requirements of the
6 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
7 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
8 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of
9 employment, in violation of Labor Code section 432.5. Based on information and belief,
10 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to agree in writing to a
11 background check which failed to abide by the requirements set forth in CA Civil Code section
12 1786, et seq. and 15 U.S.C. section 1681, et seq., by including but not limited to, failing to provide
13 a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information
14 (including but not limited to, a liability release/waiver, information that is solely relevant to
15 applicants from different states), failing to provide a lawful purpose for the background check,
16 failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way
17 by which the individual could request a copy of the report, and failing to properly obtain
18 authorization or consent to such a background check, and thus was an unlawful background check.
19 Based on information and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved
20 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
21 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
22 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
23 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

28 162. Upon information and belief, DEFENDANTS, in violation of California law,

1 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
2 (“FEHA”), asked PLAINTIFF and Aggrieved Employees about convictions prior to extending an
3 offer of employment and/or otherwise impermissibly inquired into criminal history on its
4 employment application in violation of California law.

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

10 164. These violations subject DEFENDANTS to civil penalties under the Labor Code,
11 including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each
12 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
13 civil penalty.

14 165. Under the provisions of PAGA and the above-mentioned Labor Code sections,
15 including but not limited to, Labor Code sections 201, 202, 203, 210, 216, 221-223, 225.5, 226,
16 226.2, 226.3, 226.7, 227.3, 245-248.5, 256, 432, 432.3, 432.5, 432.7, 510, 511, 512, 558, 558.1,
17 970, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1198.5, 1199, 2699, 2699.3, 2751, 2802,
18 2810.5 and all applicable Wage Orders as well as all interpretations of these laws by California
19 Courts and administrative bodies, as well as any other law that is enforceable through PAGA,
20 DEFENDANTS are liable for the following penalties:

- 21 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
22 relevant California Labor Code provisions listed herein only if permitted by the
23 PAGA statute, pursuant to Labor Code section 2699(a); and
- 24 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
25 violations without a civil penalty recoverable under the PAGA, all in the default
26 amounts provided by Labor Code section 2699(f).
- 27 c. The proper measure of penalties under PAGA is the number of violations,
28 whether those violations were committed as against Plaintiff or any Aggrieved

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Employee, whether a party to this action or not.

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

PRAYER FOR RELIEF

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

1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For reasonable attorney's fees and costs of suit; and
3. For such other and further relief that the Court deems just and proper.

Dated: September 30, 2022

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Jonathan Stilz, Esq.
Attorneys for Plaintiff,
ALEXA MELARA

EXHIBIT 1



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July 1, 2022

VIA ONLINE FILING ONLY:

PAGAfilings@dir.ca.gov
California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL:

Paracorp Incorporated
Agent for Service of Process for:
Anza Management Company
2804 Gateway Oaks Dr #100
Sacramento, CA 95833

Anza Management Company
Attn: Human Resources/Legal Dept.
2280 University Drive
Newport Beach, CA 92660

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency and Anza Management Company
Date: July 1, 2022
Subject: *Alexa Melara v. Anza Management Company*

Introduction

This office represents COMPLAINANT, Alexa Melara (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT

was, at all relevant times herein mentioned, an employee of the following entity and individual managing agents of said entity: Anza Management Company (hereinafter, this entity and its managing agents are referred to collectively as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”), and on behalf of all current and former exempt employees employed by EMPLOYER within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699, 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. The

specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.2, 226.7, 227.3, 245-248.5, 432.3, 432.5, 432.7, 510, 511, 512, 515, 558, 558.1, 970, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

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

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT is informed and believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code Section 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, 1194 and 2802 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER and its managing agents own, operate, or otherwise manage a property management company that, primarily manages residential income properties located in California, including but not limited to, in the counties of San Bernardino and Los Angeles, where COMPLAINANT was assigned to work by EMPLOYER. At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order. While EMPLOYER may operate a successful company or have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee from in or about 2017 until the termination of COMPLAINANT's employment, in or about August 2021. COMPLAINANT worked for EMPLOYER as a non-exempt Community Manager, onsite property manager, and/or other similar title(s) at, including but not limited to, EMPLOYER's housing/apartment complex known as "Windrose" and located at 44710 N. Division St. in Lancaster, California. COMPLAINANT's job duties included, but were not limited to, responding to residential disturbances/tenant inquiries, scheduling maintenance workers/projects/filling maintenance orders for work on EMPLOYER's residential units and common areas, showing rental units, collecting tenant signatures on various documents, among other duties.

COMPLAINANT typically worked shifts lasting at least 8 ½ hours per day, at least five (5) days per week. EMPLOYER compensated COMPLAINANT on an hourly basis but only for time counted by EMPLOYER as hours worked. Based on information and belief, EMPLOYER also provided COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with onsite lodging which EMPLOYER accounted for as a portion of their earned compensation. Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also compensated with non-discretionary remuneration, including but not limited to, non-discretionary commissions and/or bonuses/incentive pay (e.g., for meeting high-unit occupancy and/or budget quotas).

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to produce or make available NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' personnel records and/or payroll records when requested pursuant to Labor Code sections (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (4) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wages for all hours worked and overtime/regular rates for corresponding work; (5) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (6) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the employee's regular rate of compensation for missed/improper meal and/or rest periods; (7) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (8) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (9) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (10) made unlawful deductions from COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (11) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (12) knowingly makes and continues to make false representations to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about the nature or existence of work, continued employment and/or compensation to induce an employee to move/relocate in reliance thereon; (13) unlawfully inquires into salary history on its employment applications and requires NON-EXEMPT AGGRIEVED EMPLOYEES AND EXEMPT AGGRIEVED EMPLOYEES to sign off on same as a condition of obtaining employment; (14) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (15) conducted and continues to conduct illegal background criminal and/or financial checks as a condition of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT EMPLOYEES' hire or maintaining their employment; and (16) required and continues to require COMPLAINANT and NON-

EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer or employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES, and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. The applicable IWC Wage Order, including but not limited to, Wage Order 5-2001 (and all applicable Wage Orders), section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's unlawful practices, including but not limited to, EMPLOYER's time rounding, misclassification of NON-EXEMPT AGGRIEVED EMPLOYEES as exempt/salaried, payment according to scheduled hours rather than actual hours worked, automatic meal break deductions, and practices, and/or other off-the-clock work policies and practices described below.

EMPLOYER further failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

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

Moreover, based on information and belief, EMPLOYER failed to keep accurate records and issue accurate wage statements by not showing total wages paid each payroll period, including value of board, lodging or other compensation furnished to NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 5-2001 (and all applicable Wage Orders), section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

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

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code section 226.7; all applicable IWC Wage Orders, section 11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and/or work through part or all their meal periods due to the nature and constraints of their job duties, lack of relief workers available, and/or commentary from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. For example, COMPLAINANT's supervisor informed COMPLAINANT that COMPLAINANT was required to be on call, available and answer her phone as needed twenty-four hours a day, seven (7) days a week. COMPLAINANT's meal periods were consistently interrupted and/or cut short due to lack of relief workers available, having to respond to inquiries from staff members and /or having to attend to other work tasks requiring immediate attention, such as, but not limited to, responding to tenant complaints/answering tenant inquiries and/or other work tasks. COMPLAINANT estimates she was rarely, if ever, afforded a full thirty minute, uninterrupted, off duty, meal period before the end of her fifth hour of work due to the nature of her job duties and/or pressure from management to work through part or all of her unpaid breaks.

Based on information and belief, EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks. For example, NON-EXEMPT AGGRIEVED EMPLOYEES were required to monitor and be responsive to work communication devices, such as but not limited to, their cell phones which they were required to answer as needed for work calls during purportedly off-duty meal periods. Furthermore, based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain on EMPLOYER'S premises during any purported meal periods. As such, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES remained subjected to EMPLOYER'S control during meal periods.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working during unpaid meal periods. For example, COMPLAINANT was required to monitor her work phone during unpaid meal periods and constantly had her meal periods interrupted with work-related calls/text messages from her supervisor, yet COMPLAINANT's supervisor required COMPLAINANT clock out for at least half an hour (usually at least 60 minutes) per day for these interrupted, on-duty and/or otherwise non-compliant meal periods. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also instructed by their supervisors to work during unpaid meal periods due to the nature of their work and/or lack of relief workers available.

NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut

short/skipped completely due to their need to complete work-related tasks, such as but not limited to, performing maintenance/repair work and respond to tenant inquiries. For example, throughout the relevant period, COMPLAINANT's meal periods were consistently interrupted, worked through completely and/or late due to lack of coverage/relief workers, the nature of her job duties, and/or commentary from supervisors pressuring her to work through meal periods. COMPLAINANT estimates her meal periods were late, interrupted, cut short and/or worked through completely at least four (4) times per week. On information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also unable to take timely, off-duty meal periods of at least thirty minutes in length, due to the nature of their job, workload, and/or lack of relief workers.

Moreover, based on information and belief, COMPLAINANT consistently took late meal periods due to, including but not limited to, unaccounted for pre-shift work time. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also suffered and/or permitted to take their meal periods late/after the fifth hour of work due to, among other reasons, unaccounted for pre-shift off-the-clock work tasks EMPLOYER required.

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

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

EMPLOYER also failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal period start and end times. Based on further information and belief, EMPLOYER illegally rounded the start and end times of meal periods resulting in NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. EMPLOYER failed to provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with a second meal period despite COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES consistently working over ten hours in a workday and thus being entitled to a second duty-free, uninterrupted, thirty-minute meal period before the end of the tenth hour of work. Per EMPLOYER's unlawful meal period policies and practices, EMPLOYER only provided a single meal period per shift, even during shifts lasting longer than ten hours, and that single meal period was non-compliant. For example, at times, COMPLAINANT worked shifts lasting over ten hours but was not provided with a second meal period.

Upon information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a proper meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, commission/piece-rate pay, non-discretionary bonuses/incentive pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

Based on information and belief, EMPLOYER was informed of NON-EXEMPT AGGRIEVED EMPLOYEES' inability to take compliant meal periods due to lack of relief workers available and/or their need to tend to attend to work tasks requiring immediate attention such as, but not limited to, attending to property maintenance emergencies and/or answering tenant inquiries or concerns. Yet, EMPLOYER failed to take any action to remedy the situation in order to allow COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to take compliant, non-interrupted meal periods. EMPLOYER failed to timely relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for meal periods and failed to maintain accurate record of non-compliant meal periods taken by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, EMPLOYER regularly recorded NON-EXEMPT AGGRIEVED EMPLOYEES' meal breaks as if they were timely taken, even though a meal period was not actually afforded at this time and/or were otherwise not in accordance with California law.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order No. 5-2001 (and all applicable IWC Wage Orders), section 11(A), (B) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), section 20 (establishing that "i]n addition to any other civil penalties provided by law, any employer or any other

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

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, including but not limited to No. 5-2001, section 12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shift more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269.

Moreover, under California law rest periods must be a “net” ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to its employees.”).

Employers must pay employees an additional hour of wages at the employee’s regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code section 226.7; IWC Wage Order No. 5-2001, section 12(B) (“If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided”).

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with net ten-minute rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

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

person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Any purported rest periods would be interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, understaffing, and/or commentary from supervisors pressuring them to skip rest breaks completely and/or take non-compliant rest breaks. For example, COMPLAINANT was consistently forced to cut any rest breaks short or skip them completely due to the nature of the work and/or lack of relief workers available to perform work tasks that had to be done immediately, e.g, responding to inquiries/concerns from tenants/prospective tenants/staff members, addressing property maintenance situations/filling maintenance orders and/or completing other work tasks.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once jobs were completed/as time permitted. For example, COMPLAINANT typically worked at least 8 ½ hours continuously in a workday without being provided two legally compliant rest periods. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured by their supervisors to skip/work through their owed second rest periods and any first periods were usually non-compliant.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest breaks. For example, EMPLOYER required COMPLAINANT to remain on the worksite premises and/or tethered to work-communication devices during any rest periods. As such, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES remained under EMPLOYER's control during any rest periods, rendering said rest periods on duty and therefore noncompliant with California rest period law.

Based on information and belief, EMPLOYER did not have a compliant policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. For example, based on information and belief, EMPLOYER failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law. EMPLOYER's failure to communicate that the rest period is a *net* ten minutes deprived NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to a full rest period, as such as policy only relieves NON-EXEMPT AGGRIEVED EMPLOYEES from their workstation for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten minutes.

As a result of EMPLOYER's unlawful policies and practices explained above, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not authorized and permitted to take legally compliant rest periods. Furthermore, EMPLOYER failed to pay a rest period premium for each day in which there was a missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period

premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, commission pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-2001 (and all applicable Wage Orders), section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section §§ 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of, including but not limited to, EMPLOYER’s automatic deductions and time rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated off-the-clock work policies and/or practices, failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely off duty, thirty-minute, uninterrupted meal periods, often being forced to work through

³ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

part or all their meal periods due to the nature and constraints of their job duties and/or commentary from supervisors pressuring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely.

On information and belief, the work time reported by NON-EXEMPT AGGRIEVED EMPLOYEES was rounded and automatically deducted for at least 30 minutes (typically at least 60 minutes) of wages every day they worked for EMPLOYER for meal breaks not taken, interrupted, or not relieved of all duties and EMPLOYER's control. Per EMPLOYER's policies and practices, NON-EXEMPT AGGRIEVED EMPLOYEES were required to clock out for at least thirty for purported meal periods, despite EMPLOYER's actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES were working through part or all these meal periods.

Based on information and belief, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty/sixty minutes per shift for meal periods and/or requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for at least thirty/sixty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were working through part or all these meal periods.

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods and shift start and end times resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked.

COMPLAINANT alleges on information and belief that EMPLOYER implemented a time-rounding system that as applied systematically deprived NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. Based on information and belief, EMPLOYER had and continues to have a continuous policy of paying NON-EXEMPT AGGRIEVED EMPLOYEES for scheduled hours, rather than actual hours worked and requiring pre-shift and/or post-shift off-the-clock work. Based on information and belief, EMPLOYER instructed COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to record their scheduled shift start time and end times regardless of when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES actually started and stopped working on those days, which resulted in significant off-the-clock work and the underpayment of wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, EMPLOYER purported to compensate for some "after-hours" work by having COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES notate on a written "Missed Punch Report" form time spent performing certain "after-hours" work activities, however, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were instructed by their supervisors to round their time down and/or forego recording all time spent performing work activities outside of their scheduled shift times and/or their reported time was rounded down by EMPLOYER such that COMPLAINANT and

other NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for all hours worked, including but not limited to, pre-shift and/or post shift off-the-clock work, such as, but not limited to, all time spent responding to resident noise complaints and handling resident parking issues/towing vehicles after hours, attending to tenant lock-outs, providing access to residents/maintenance vendors and/or assisting maintenance vendors with onsite projects after hours, among other off-the-clock work tasks EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to perform outside of their scheduled shift times. COMPLAINANT estimates this pre-shift and/or post-shift off-the-clock work resulted at times in at least several hours of off-the-clock work each week that was not recorded and not compensated by EMPLOYER and, as such, resulted in the significant underpayment of minimum and overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform additional pre-shift and post shift off-the-clock work. For example, prior to clocking in for their scheduled shifts, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to start and/or boot up EMPLOYER's computer systems, phone systems, and/or software so as to have all systems running at the start of the scheduled shift. As such, COMPLAINANT spent at least five to ten minutes before each scheduled shift booting up and/or logging into and/or otherwise preparing various work applications in order to clock in and begin her shift. This pre-shift work was off-the-clock and uncompensated resulting in unpaid minimum and overtime wages.

Based on information and belief, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Based on further information and belief, EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for time spent completing trainings and/or reviewing policies as required by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to complete mandatory off-the-clock administrative tasks, onboarding, training, certification, and/or other tasks without compensating for all hours worked. EMPLOYER's failure to pay for all time worked by virtue of, including but not limited to, its time-rounding practices and only paying for scheduled hours resulted in the underpayment of minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or forty hours in a week.

Based on information and belief, EMPLOYER failed/fails to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for additional time spent performing pre-shift and/or post-shift off-the-clock work/work outside of their scheduled shifts. Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated all owed minimum and overtime wages for all time spent performing work duties outside of her scheduled shift and/or time spent on call. For example, COMPLAINANT was required to monitor

her work phone and be on call twenty-four hours per day, seven (7) days per week, including but not limited to, on purported days off and/or what were supposed to be vacation days. COMPLAINANT would regularly have to assist tenants and/or perform other work duties after hours without being compensated for this on-call time/time spent performing work duties outside of her scheduled shift times. COMPLAINANT's supervisors informed COMPLAINANT that it was part of her job to so monitor her phone for any work calls and respond to any property/tenant issues twenty-four hours per day seven (7) days per week. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required, suffered and/or permitted to monitor work communication devices, respond to work situations, work-related phone calls and/or text messages and/or be on call outside of their scheduled shift times without being compensated for all time spent under EMPLOYER's control.

Based on information and belief, EMPLOYER also failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES minimum wages for time counted by EMPLOYER as hours worked. For example, in 2021, the minimum wage rate in California was \$14 per hour for employers with 26 or more employees. Based on information and belief, in 2021, EMPLOYER had more than 26 employees and were required to pay its employees in California at least \$14 per hour. However, based on information and belief, EMPLOYER failed to pay at least minimum wage for all hours worked. As such, EMPLOYER violated California's minimum and overtime wage laws by paying below the mandated minimum wage rate and consequently below the overtime wage rate.

Additionally, based on information and belief, EMPLOYER instituted a commission-based and or piece-rate-based compensation scheme that resulted in pay periods during which NON-EXEMPT AGGRIEVED EMPLOYEES were denied the minimum wage for all hours worked. Based on information and belief, EMPLOYER paid NON-EXEMPT AGGRIEVED EMPLOYEES on a commissioned and or piece-rate basis, at least during some pay periods, during the relevant time period. However, based on information and belief, EMPLOYER failed to separately compensate for all non-commission/non-piece rate related activities/all non-productive time, including but not limited to, all rest breaks. EMPLOYER's failure to separately so compensate resulted in NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all hours worked in violation of California minimum wage laws.

Based on information and belief, EMPLOYER misclassified NON-EXEMPT AGGRIEVED EMPLOYEES as exempt employees to try to evade California wage and hour laws including but not limited to, payment of minimum and overtime wages and provision of meal and rest periods even though misclassified NON-EXEMPT AGGRIEVED EMPLOYEES did not satisfy any test for exemption under California law. For example, based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not regularly exercise discretion/independent judgment in their jobs and typically spent more than fifty percent of their workday performing non-exempt duties such as, but not limited to, scheduling maintenance workers, collecting signatures on documents/clerical/ministerial duties, and/or other non-discretionary duties not requiring the exercise of independent judgment to perform.

Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated with a monthly salary (exclusive of the value of any lodging) that equated to twice

the California minimum wage rate. See, Labor Code section 515 and Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment”].

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES that were paid on a salary basis and/or otherwise misclassified as exempt were denied all owed minimum and overtime wages due to EMPLOYER’s misclassification scheme.

Violation of IWC Wage Order Section 10:

Section 10 of all applicable IWC Wage Orders states that “lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee.” Case law indicates that the agreement must state that the employer will credit lodging against the employee’s wages. See, *Von Nothdurft v. Steck* (2014) 227 Cal.App.4th 524 (2014) (the employer and the employee “must voluntarily agree to credit lodging against the employee’s wages.”) Assuming the existence of such a voluntary written agreement, Section 10 of IWC Wage Order 5-2001 (and all applicable IWC Wage Orders) sets forth the maximum amounts that can be credited for lodging against the minimum wage.

Based on information and belief, EMPLOYER had and has a policy and practice of unlawfully crediting lodging against the minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, resulting in the underpayment of minimum wages owed to NON-EXEMPT EMPLOYEES. For example, based on information and belief, EMPLOYER credits lodging towards its minimum wage obligations to NON-EXEMPT AGGRIEVED EMPLOYEES that exceeds the maximum allowable rental credit under California law and/or EMPLOYER fails to execute voluntary written agreement(s) to credit lodging against its minimum wage obligations due to, including but not limited to, failure to explicitly state that the rental credit is being applied towards the employer’s minimum wage obligations and/or failure to execute any voluntary written agreement, as required under California law. See Section 10 of IWC Wage Order Section 5-2001 (and all applicable IWC Wage Orders).

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices, failure to provide off-duty meal periods, payment according to scheduled hours rather than actual hours worked, and other mandated off-the-clock work described above resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, including but not limited to Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

⁴ See Lab. Code section 1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; IWC Wage Order 5-2001, (and all applicable IWC Wage Orders) section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

EMPLOYER violated California's overtime laws by, among other things, misclassifying NON-EXEMPT AGGRIEVED EMPLOYEES as exempt in violation of including but not limited to, Labor Code section 515 and all applicable IWC Wage Orders, failing to correctly calculate, or record at all, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's unlawful policies and practices explained above, including but not limited to, payment according to scheduled hours rather than actual hours worked, automatic deduction and time rounding policies and practices for meal periods, start shift times and end times, and/or mandated off-the-clock work policies and practices explained above resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Based on further information and belief, EMPLOYER had and continues to have a policy and practice of rounding total overtime hours worked by NON-EXEMPT AGGRIEVED EMPLOYEE which resulted in the underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary commissions, bonus/incentive pay and/or other non-discretionary pay into the regular pay rate(s) of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, EMPLOYER compensated NON-EXEMPT AGGRIEVED EMPLOYEES with non-discretionary bonuses/incentive pay (e.g., for meeting high-unit occupancy and/or budget quotas) and/or commission pay in pay periods during which they worked

subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

overtime, yet DEFENDANTS failed to include the non-discretionary pay in the regular pay rate used to calculate the owed overtime rate. Failing to include non-discretionary compensation in the regular pay rate resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

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

This conduct results in violations of Labor Code sections 218.5, 510, 515, 558, 558.1, 1198-1199, and IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and the applicable Wage Order, including but not limited to Wage Order 5-2001 (and all applicable Wage Orders), section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Failure to Provide Written Commission Agreements: Labor Code section 2751 requires that all commission contracts "be in writing and . . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who were compensated on a commission basis with proper written commission agreements, in violation of Labor Code section 2751.

Violation of Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium

⁵ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

Based on information and belief, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES who were paid solely on a piece rate and/or commission basis separately for the rest periods and other nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, EMPLOYER further failed to include this information on NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements. As such, EMPLOYER failed to comply with Labor Code section 226.2.

Violation of California Labor Code Sections 245-248.5: Based on information and belief, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and shift start and end times/ or other required off-the-clock work described herein) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses/incentive pay, commission and/or piece rate pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

EMPLOYER further failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice.

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

Throughout the relevant time period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, and thus affected their intelligent exercise of their paid sick leave.

But for this failure, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER also unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick 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, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁶

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

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with lawful meal and rest periods and premium wages, the wage statements EMPLOYER issued to COMPLAINANT and non-exempt AGGRIEVED EMPLOYEES fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to NON-EXEMPT AGGRIEVED EMPLOYEES failed to among other things, indicate earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by the COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of the payment according to scheduled hours rather than actual hours worked, automatic deduction for meal periods, time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*) which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

⁶ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

Separately, EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 226(a)(9). Based on information and belief, EMPLOYER failed to list any overtime rate(s) at all and/or EMPLOYER failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 226(a)(9).

Based on information and belief, EMPLOYER issued wage statements to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES that failed to accurately list all deductions. As such, wage statements issued to NON-EXEMPT AGGRIEVED EMPLOYEES did not have all the statutorily required information under Labor Code section 226(a), including but not limited to, all deductions, total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code section 226(a).

Employer's failure to accurately list all hours worked and all applicable hourly rates in effect during the pay period on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

Because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER violated California Labor Code section 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

Separately, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, that failed to list the correct name and address of the legal entity that is the employer, in violation of Labor Code section 226(a)(8). As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information, including but not limited to the name and address of the legal entity that is the employer.

Separately, based on information and belief, EMPLOYER issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that did not list the beginning and end dates of the pay period for which wages were being paid, in violation of Labor Code section 226(a). As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES were not

accurate and did not include all of the statutorily required information, including but not limited to the inclusive dates of the period for which the employee is paid.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by failing to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code § 210. Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations with respect to meal periods, rest periods, recordkeeping provisions, unreimbursed business expenses, minimum wages and overtime wages result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period, including but not limited to deducting costs advanced by EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES' final paychecks as well as deductions for purported overpayments from prior pay periods and/or improper deductions for lodging and/or deductions for negligently broken/damaged company property. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. 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 Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee").

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

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

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES minimum wage and overtime compensation which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 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, EMPLOYER had and continues to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and/or failing to pay all vested, accrued paid time off to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁸

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal

⁸ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

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

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phones/mobile devices and/or personal computers. Based on information and belief, EMPLOYER did not reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all cell phone/mobile device, data plan charges incurred in the performance of their job duties. For example, based on information and belief, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES regularly received work-related calls and/or messages to their personal phones from, including but not limited to, managers and/or supervisors, staff members, and tenants, regarding, e.g., noise complaints and/or other tenant complaints, scheduling, and other work tasks but did not receive any reimbursement and/or were not properly reimbursed by EMPLOYER for these business expenses COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and AGGRIEVED EMPLOYEES incurred as a direct consequence of the performance of their job duties.

Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES incurred expenses associated with being required to use their personal vehicles for work without receiving full reimbursement from EMPLOYER for the costs they incurred in connection therewith. For example, EMPLOYER required COMPLAINANT to drive her personal vehicle between EMPLOYER’s various locations/complexes throughout COMPLAINANT’s workday to complete jobs at the various locations and further required COMPLAINANT to use her personal vehicle for additional business purposes, such as but not limited to, going to the bank, dropping off items at EMPLOYER’s various properties, attending training meetings, among other job duties, without reimbursing COMPLAINANT for all vehicle-related expenses COMPLAINANT incurred as a direct consequence thereof, including but not limited to, gas, mileage, and vehicle wear and tear. Based on information and belief, at times, EMPLOYER purported to compensate COMPLAINANT for some vehicle-related expenses, but the amount offered fell far below the Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period and/or otherwise failed to compensate COMPLAINANT for all reasonable vehicle-related expenses she was required to incur in performing her job. EMPLOYER’s failure to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out her duties required COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES AND EXEMPT AGGRIEVED EMPLOYEES to subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

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

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

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and Wage Order 5-2001 (and all applicable IWC Wage Orders), section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on or about January 13, 2022, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, based on information and belief, EMPLOYER failed to produce/make available COMPLAINANT's complete records within the time periods delineated by California labor law. COMPLAINANT sent a follow-up request for her personnel and payroll records on or about February 23, 2022, yet, EMPLOYER failed to produce/make available the requested records. Based on information and belief, EMPLOYER failed to produce/make available any records at all within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject employer to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Violation of Labor Code Section 970

Labor Code section 970 prohibits an employer from knowingly making false representations about the nature or existence of work, continued employment and/or compensation to induce an employee to move/relocate in reliance thereon. Specifically, Labor Code section 970 provides:

No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either:

- (a) The kind, character, or existence of such work;
- (b) The length of time such work will last, or the compensation therefor;

Based on information and belief, EMPLOYER has a policy and practice of knowingly making false representations to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES regarding obtaining/continued employment, the nature of work to be performed and/or the terms of their compensation to influence, persuade or engage its employees to relocate/move for purposes of employment, in violation of Labor Code section 970.

Unlawful Inquiries into Salary History

Labor code section 432.3 provides in part "(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and

benefits, about an applicant for employment.” Based on information and belief, EMPLOYER has a policy and/or practice of unlawfully asking NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to reveal their salary history when applying for employment with EMPLOYER. Based on information and belief, EMPLOYER required other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose the same or similar information, in violation of Labor Code section 432.3.

Moreover, by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose prior salary information in a written application for employment, EMPLOYER violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose their salary history as a condition of obtaining employment with EMPLOYER, in violation of California law.

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, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment, such as, but not limited to, unlawful criminal and/or financial checks, unlawful confidentiality agreements, unlawful waivers of representative actions, unlawful commission agreements, unlawful lodging agreements, and/or unlawful non-compete agreements as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation

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

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

EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information (including but not limited to information relevant to applicants from different states), failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, 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 COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

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

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

Moreover, based on information and belief, EMPLOYER required/requires NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements as a condition of employment, including but not limited to, an unlawful waiver of their right to bring a representative action/PAGA waiver, unlawful lodging agreements, unlawful non-cand moreover, knew that such an agreement was unlawful. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful waiver of representative action/ PAGA waiver, EMPLOYER

required written agreement to an unlawful provision as a condition of employment which is a violation of Labor Code section 432.5.

By requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

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

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, and the applicable Wage Order (including but not limited to Wage Order 5), as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code section 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code sections 2699, 2699.3(a), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining

whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC