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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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

Plaintiff,

v.

CROSSROADS OF CHOICE, INC., a
California corporation; COMMUNITY
CROSSINGS, INC., a California
corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: **CIV SB 2227629**

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

1 Plaintiff FAATIMAH BEY ("PLAINTIFF" or "PLAINTIFF BEY"), an individual on behalf
2 of herself, the State of California, and all other Aggrieved Employees (defined below), hereby files
3 this Complaint against Defendants CROSSROADS OF CHOICE, INC., a California corporation;
4 COMMUNITY CROSSINGS, INC., a California corporation; and DOES 1-100, inclusive,
5 (collectively referred to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and
6 thereon alleges as follows:

7 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

25 4. PLAINTIFF resides in the State of California. PLAINTIFF worked for
26 DEFENDANTS in the State of California as a non-exempt, hourly-paid employee during the
27 relevant period. PLAINTIFF was employed by DEFENDANTS in the State of California as a
28 transportation driver and/or other similar title from on or about August 24, 2021, through in or about

1 the end of September 2021/beginning of October 2021. DEFENDANTS assigned PLAINTIFF to
2 work out of DEFENDANTS' facilities located in San Jacinto and Rancho Cucamonga, California.

3 5. Defendant CROSSROADS OF CHOICE, INC., is a California Corporation that, at
4 all relevant times, was authorized to do business within the State of California and is doing business
5 in the State of California.

6 6. Defendant COMMUNITY CROSSINGS, INC. is a California Corporation that, at
7 all relevant times was authorized to do business within the State of California and is doing business
8 in the State of California.

9 7. DEFENDANTS own, operate, or otherwise manage a business that provide services
10 for the elderly and persons with disabilities, including but not limited to, non-emergency medical
11 transportation services throughout locations in Southern California with facilities located in,
12 including but not limited to, Rancho Cucamonga and San Jacinto.

13 8. The true names and capacities of the DOE Defendants sued herein as DOES 1
14 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
15 Defendant by said fictitious names. Each of the DEFENDANTS designated herein as a DOE is
16 legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to
17 amend this Complaint to reflect the true names and capacities of the Doe Defendants when such
18 identities become known.

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

1 **JOINT LIABILITY**

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

12 11. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the
13 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
14 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
15 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
16 over wages, hours and working conditions of PLAINTIFF and the Aggrieved Employees; (2)
17 suffered or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged
18 PLAINTIFF and Aggrieved Employees to work for them.

19 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
21 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
22 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
23 policies and practices regardless of the location(s) where they worked. Among other things,
24 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
25 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
26 over the day-to-day operations and employment matters, including the power to hire and fire, set
27 schedules, issue employee policies, and determine rates of compensation across its locations in
28 California; (3) DEFENDANTS utilize the same policies and procedures for all California

1 employees, including issuing the same employee handbooks and other form agreements; (4)
2 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
3 employment matters; and, (6) DEFENDANTS share employees.

4 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
5 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
6 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
7 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
8 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
9 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
10 Employees. For example, wage statements DEFENDANTS issued to PLAINTIFF identify
11 "Crossroads of Choice Inc" as the employer. Yet, documents in PLAINTIFF's personnel file,
12 including but not limited to, documents sent to and/or received from government agencies regarding
13 and/or verifying PLAINTIFF's employment identify "Community Crossings, Inc." and/or
14 "Community Crossings Inc." as the employer. Moreover, DEFENDANTS, and each of them, have
15 the same California registered agent for service of process and California principal place of business.

16 14. As such, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies,
17 practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices,
18 meal and rest periods, reimbursement of business expenses and other working conditions that were
19 distributed to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that
20 DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF and the
21 Aggrieved Employees in a uniform manner. DEFENDANTS collectively represented to
22 PLAINTIFF and the Aggrieved Employees that each was an "at-will" employee of DEFENDANTS,
23 and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Aggrieved
24 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
25 further collectively represented to PLAINTIFF and Aggrieved Employees in writing the details of
26 their compensation, and the manner in which they were to take meal and rest periods, the procedures
27 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
28 to PLAINTIFF and Aggrieved Employees by which DEFENDANTS collectively would evaluate

1 the wage rates of PLAINTIFF and Aggrieved Employees.

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

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

10 **PAGA ALLEGATIONS**

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

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

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

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

28 19. On August 31, 2022, PLAINTIFF BEY, through counsel, gave written notice by

online filing with the California Labor and Workforce Development Agency ("LWDA") informing it that DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged in this Complaint ("PAGA Notice"). The LWDA assigned PLAINTIFF the following case number: LWDA-CM-905365-22. Attached hereto as **Exhibit 1** is a copy of the PAGA Notice, which was also sent to DEFENDANTS via certified mail.

20. The PAGA Notice outlined PLAINTIFF's claims for violations of the California Labor Code and the applicable wage orders on behalf of herself, the State of California and other Aggrieved Employees.

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

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

FACTUAL ALLEGATIONS

23. During the relevant period, PLAINTIFF, and Aggrieved Employees worked for DEFENDANTS in the State of California. At all times, DEFENDANTS exercised control over PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them to work.

24. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee. PLAINTIFF worked for DEFENDANTS as transportation driver and/or similar title from on or about August 24, 2021 through in or about late September 2021/early October 2021.

25. PLAINTIFF regularly worked at least seven (7) hours per day, at least five (5) days per week. DEFENDANTS compensated PLAINTIFF with an hourly rate for time counted by DEFENDANTS as hours worked.

26. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of

1 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
2 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
3 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
4 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
5 below.

6 27. Based on information and belief, DEFENDANTS implemented a policy and/or
7 practice of rounding meal period start and end times and/or automatically deducting at least thirty
8 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
9 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
10 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
11 PLAINTIFF and Aggrieved Employees of all wages owed.

12 28. Based on information and belief, Aggrieved Employees were not paid for all hours
13 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
14 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.
15 For example, based on information and belief, DEFENDANTS required Aggrieved Employees to
16 obtain Covid-related testing outside of their scheduled shift times without compensating them for
17 the time spent completing DEFENDANTS' testing requirements. For example, DEFENDANTS
18 required PLAINTIFF to undergo Covid testing outside of her scheduled shift times once per week
19 without compensating PLAINTIFF for the time spent fulfilling DEFENDANTS' testing
20 requirements. PLAINTIFF estimates this amounted to at least forty-five minutes of off-the-clock
21 work each week that was neither recorded nor compensated, resulting in the underpayment of
22 minimum wages owed to PLAINTIFF.

23 29. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
24 also required to complete other off-the-clock work tasks outside of their scheduled shifts, including
25 but not limited to, during purportedly off-duty meal periods, due to work-related phone calls and/or
26 messages they received and were required to respond to, including but not limited to,
27 communications from supervisors to discuss changes in pick-up and/or or drop-off schedules and/or
28 otherwise coordinate work activities, resulting in consistent off-the-clock work and the

1 underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees.

2 30. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and
3 other Aggrieved Employees split shift compensation whenever their work schedules were
4 interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a
5 violation of the applicable Wage Order (See section 4 of all applicable Wage Orders, “When an
6 employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to
7 the minimum wage for that workday...)

8 31. Based on information and belief, DEFENDANTS failed to pay Aggrieved
9 Employees for time they were required to spend completing orientation, policy questionnaires,
10 and/or time spent completing the onboarding process including but not limited to reviewing various
11 documents and policies provided by DEFENDANTS. Moreover, based on information and belief,
12 DEFENDANTS required PLAINTIFF to submit to mandatory testing, trainings and/or
13 certification(s). Based on information and belief, this work time was completed off-the-clock and
14 was not compensated. Moreover, based on information and belief, PLAINTIFF was not
15 compensated for time spent completing DEFENDANTS-mandated testing, trainings and/or
16 certifications.

17 32. Based on further information and belief, DEFENDANTS implemented a time-
18 rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved
19 Employees of compensable time because the time-rounding system implemented by
20 DEFENDANTS would almost always, if not always, result in understating actual compensable work
21 time.

22 33. DEFENDANTS’ failure to pay for all time worked by virtue of its time rounding,
23 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
24 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
25 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
26 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
27 forty (40) hours in a week.

28 34. Based on information and belief, DEFENDANTS had actual and/or constructive

1 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
2 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
3 underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees, in
4 violation of California's minimum and overtime wage laws.

5 35. Based on information and belief, DEFENDANTS failed and continue to fail to pay
6 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
7 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
8 a work week, in violation of California's overtime laws.

9 36. Based on information and belief, DEFENDANTS failed to incorporate all non-
10 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
11 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
12 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
13 Aggrieved Employees.

14 37. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
15 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
16 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
17 (30) minute first (and second) meal periods. Based on information and belief, Aggrieved Employees
18 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
19 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
20 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
21 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
22 completely. For example, PLAINTIFF's meal periods were regularly interrupted by management to
23 receive instructions for work-related tasks that PLAINTIFF was required to perform while off the
24 clock during purportedly off-duty meal periods. Such off-the-clock work tasks that PLAINTIFF was
25 directed by her DEFENDANTS to perform during purportedly off-duty meal periods included, but
26 were not limited to,: driving out to pick up and/or drop off clients, performing work-related
27 certification tasks, making deliveries and/or running errands as directed by DEFENDANTS,
28 including but not limited to, picking up and/or dropping off clients' work packets and/or completing

1 other work tasks. Based on information and belief, PLAINTIFF and other Aggrieved Employees
2 were also required to complete other off-the-clock work tasks during purportedly off-duty meal
3 periods due to, including but not limited to, work-related phone calls and/or messages they received
4 and were required to respond to, including but not limited to, communications from supervisors to
5 discuss changes in pick-up and/or or drop-off schedule and/or otherwise coordinate work activities,
6 resulting in consistently interrupted and/or shortened meal periods.

7 38. Based on information and belief, other Aggrieved Employees were consistently
8 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
9 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
10 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
11 the need to meet DEFENDANTS' goals and expectations.

12 39. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
14 during unpaid meal periods.

15 40. Based on information and belief, DEFENDANTS required Aggrieved Employees to
16 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
17 into account when scheduling meal periods for Aggrieved Employees. Based on information and
18 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

19 41. Based on information and belief, despite DEFENDANTS' failure to provide lawful
20 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
21 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
22 deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite
23 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did
24 not receive lawful meal periods.

25 42. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
26 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)
27 minute second meal period. For example, when PLAINTIFF worked more than ten hours in a shift,
28 PLAINTIFF was not provided with a second meal period.

1 43. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
2 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
3 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
4 did DEFENDANTS have any sort of compliant policy in practice.

5 44. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
6 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
7 Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally
8 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other
9 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
10 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

11 45. Based on information and belief, DEFENDANTS had actual and/or constructive
12 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
13 were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
14 violation of California's meal period laws.

15 46. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
16 additional hour of wages at their respective regular rates of compensation for each workday a lawful
17 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
18 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
19 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
20 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
21 compensation for purposes of calculating the owed meal period premium.

22 47. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
23 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
24 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
25 middle of the work period, as required by law.

26 48. PLAINTIFF and other Aggrieved Employees were not adequately informed,
27 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
28 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to

1 the taking of duty-free rest periods.

2 49. Based on information and belief, DEFENDANTS did not have a have a compliant
3 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
4 practice. For example, PLAINTIFF was consistently unable to take any rest periods due to
5 understaffing and the nature and constraints of her job duties, including but not limited to, the need
6 to monitor, supervise, and/or instruct elder and dependent adults she was overseeing and/or the need
7 to keep up with her routes/pick-up/drop-off schedule. The elder and dependent adults in
8 DEFENDANTS' programs had to be supervised at all times, yet DEFENDANTS frequently
9 understaffed the number of employees needed to supervise/monitor the elder and dependent adults.
10 As such, PLAINTIFF and other Aggrieved Employees were frequently unable to take duty-free rest
11 periods due to understaffing and lack of relief workers. PLAINTIFF was frequently deprived of any
12 opportunity to take a rest period.

13 50. Based on information and belief, Aggrieved Employees' rest periods were
14 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and
15 constraints of their job duties, and/or due to commentary from supervisors/managers pressuring
16 them to skip rest periods completely or otherwise take non-compliant rest periods.

17 51. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
18 lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer than ten
19 hours, PLAINTIFF was not afforded the opportunity and/or was not permitted to take a third ten-
20 minute rest period.

21 52. Based on information and belief, DEFENDANTS implemented policies and/or
22 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
23 DEFENDANTS' control during rest periods.

24 53. Based on information and belief, Aggrieved Employees were pressured to complete
25 their work duties according to a designated schedule such that rest periods were only taken once
26 tasks were completed, and/or as time permitted.

27 54. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
28 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in

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

6 **55. Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
7 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
8 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
9 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
10 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
11 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
12 applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee.

14 **56.** DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
15 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
16 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
17 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
18 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
19 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
20 other off-the-clock work policies and practices) which results in a violation of Labor Code section
21 226(a).

22 **57.** As described herein, based on information and belief, DEFENDANTS also failed to
23 incorporate all forms of non-discretionary compensation earned during the pay period into the
24 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
25 of overtime worked by PLAINTIFF and other Aggrieved Employees.

26 **58.** Moreover, based on information and belief, DEFENDANTS issued wage statements
27 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
28 other things, failing to list the correct name and/or address of the legal entity that is the employer.

1 59. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
2 Employees that were not accurate and did not include all of the statutorily required information. As
3 such, DEFENDANTS violated Labor Code section 226.

4 60. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
5 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
6 were due and owing upon termination or resignation. Based on information and belief,
7 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
8 requirements of Labor Code sections 201-202.

9 61. Upon separation of employment, Aggrieved Employees' final paychecks were not
10 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
11 Moreover, PLAINTIFF's and Aggrieved Employees' final paychecks, once provided, did not
12 include all wages owed as they were devoid of, including but not limited to, all owed minimum
13 wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off
14 wages at the properly accrued rates. For example, based on information and belief, DEFENDANTS
15 did not provide PLAINTIFF with her final paycheck on her date of termination, instead requiring
16 PLAINTIFF to wait until the next regularly scheduled pay date to receive her final paycheck, and
17 her final paycheck once received did not include all wages owed as it was devoid of, including but
18 not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all
19 owed sick leave and/or paid time off wages at the properly accrued rates.

20 62. These violations subject DEFENDANTS to civil penalties under Labor Code section
21 203, 210, and/or 256.

22 63. **Unreimbursed Business Expenses.** Based on information and belief,
23 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
24 direct consequence of the performance of their job duties without providing reimbursement, in
25 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
26 Employees were improperly required to provide and maintain work tools that are supposed to be the
27 responsibility of the employer.

28 64. Based on information and belief, DEFENDANTS shifted the costs of doing business

1 onto Aggrieved Employees by requiring them to pay for business expenses, including but not
2 limited to, uniforms and/or the use of Aggrieved Employees' personal mobile phone and data usage
3 for work related purposes including but not limited to receiving and responding to work related
4 messages and/or phone calls. For example, PLAINTIFF was required to clock in and out for her
5 shifts using her personal cell phone/mobile device to log into an application called Paychex that
6 DEFENDANTS required PLAINTIFF download onto her personal cell phone/mobile device.
7 PLAINTIFF was also required to use her personal cell phone/mobile device for navigation purposes
8 while picking up and dropping off clients. Additionally, PLAINTIFF was frequently required to
9 respond to calls and/or messages from PLAINTIFF's supervisor on PLAINTIFF's personal cell
10 phone during and outside of PLAINTIFF's scheduled shift times to discuss work-related activities.
11 PLAINTIFF was not reimbursed for this business use of her personal cell phone/mobile device in
12 any manner. Based on information and belief, other Aggrieved Employees were also required by
13 DEFENDANTS to download work applications, make and/or receive work-related calls and/or
14 messages and/or use their personal cellphones/mobile devices for other work-related purposes
15 without receiving reimbursement from DEFENDANTS. Based on information and belief,
16 DEFENDANTS did not reimburse Aggrieved Employees for the cost of undergoing employer-
17 mandated testing and/or certifications (e.g., Covid testing), including but not limited to, the cost of
18 purchasing the test/cost of obtaining the certification, and/or the cost of traveling and/or using a
19 personal vehicle to and from a testing/certification site. For example, DEFENDANTS required
20 PLAINTIFF to undergo Covid testing once per week without compensating PLAINTIFF for the
21 costs associated with having to use her personal vehicle to get to and from the testing site each week.

22 65. Based on further information and belief, DEFENDANTS required Aggrieved
23 Employees to use their personal vehicles for additional work-related purposes, including but not
24 limited to, for traveling between DEFENDANTS' centers/facilities for work without reimbursing
25 them for the personal vehicle expenses they incurred in connection therewith.

26 66. As such, DEFENDANTS failed and continues to fail to compensate for vehicle-
27 related expenses at the Internal Revenue Service (IRS) mandated per mile compensation rate for the
28 relevant time period.

1 67. Based on information and belief, DEFENDANTS required Aggrieved Employees
2 and to pay for the purchase and/or maintenance of uniforms/work clothing and/or pay for the
3 purchase of employer-mandated continued education trainings/certifications.

4 68. Based on information and belief, DEFENDANTS required Aggrieved Employees to
5 use personal devices to complete off-the-clock certifications/trainings/continued education courses
6 as mandated by DEFENDANTS.

7 69. Based on information and belief, DEFENDANTS regularly failed to reimburse and
8 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
9 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
10 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
11 assigned by DEFENDANTS.

12 70. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
13 for all reasonable expenses associated with carrying out their duties required that Aggrieved
14 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
15 2802.

16 71. **Sick Leave Violations:** Throughout the relevant period, DEFENDANTS either
17 failed to provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
18 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (as a result
19 of DEFENDANTS' time rounding policy and practice, automatic deduction policies and practices
20 for meal periods, and/or other off-the-clock work described above) and by failing to incorporate
21 multiple rates of pay and/or failure to incorporate all forms of non-discretionary remuneration into
22 the sick pay calculation.

23 72. DEFENDANTS failed to give PLAINTIFF and other Aggrieved Employees notice
24 of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code
25 section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick
26 leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
27 Aggrieved Employees' intelligent exercise of their paid sick leave.

28 73. But for this failure, PLAINTIFF and other Aggrieved Employees would have used

1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

4 74. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
5 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
6 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
7 were entitled to the maximum number of hours accruable.

8 75. Upon information and belief, DEFENDANTS failed and continue to fail to comply
9 with Labor Code section 246, by failing to provide PLAINTIFF and Aggrieved Employees with a
10 Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
11 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
12 wages.

13 76. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

14 77. On information and belief, PLAINTIFF alleges that all of these practices were
15 experienced and continue to be experienced by other Aggrieved Employees.

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

22 79. **Record-Keeping Violations.** Due to the unlawful policies and practices described
23 herein, DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records
24 as required by Labor Code section 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
25 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
26 required by law, including but not limited to the following records: total daily hours worked,
27 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
28 began and ended each work period, time records of meal periods, and accurate itemized wage

1 statements.

2 80. DEFENDANTS have failed and continue to fail to keep accurate and complete
3 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
4 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
5 employer control during unpaid meal periods, failure to record the true start and end times of meal
6 periods, shift start times and shift end times, and other mandated off-the-clock work policies and
7 practices described herein.

8 81. Additionally, DEFENDANTS failed and continue to fail to keep accurate records
9 and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and
10 Aggrieved Employees.

11 82. **Failure to Produce Records.** Based on information and belief, DEFENDANTS fail
12 to timely produce or make available a current or former employee's personnel records and/or payroll
13 records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable
14 Wage Order. For example, on January 28, 2022, PLAINTIFF, through counsel, sent a written
15 request for personnel, time and pay records to DEFENDANTS. Yet, DEFENDANTS failed to
16 timely produce any records within the time periods delineated by California labor law. Based on
17 information and belief, DEFENDANTS failed and continue to fail to timely produce complete
18 payroll and personnel records when requested by other Aggrieved Employees, resulting in violations
19 of Labor Code sections 226(b)-(c), 1198.5, and 432 and the applicable Wage Order.

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

25 84. **Standard Conditions of Labor Violations.** DEFENDANTS' unlawful policies and
26 practices described herein also resulted in violations of Labor Code Sections 1198 and 1199, which
27 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage
28 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,

1 and 1198, or order or ruling of the commission.

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

5 86. **Statutory Wage Violations.** As described above, DEFENDANTS willfully and
6 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
7 for all hours worked which resulted in the payment of less than the statutorily required wages owed
8 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
9 not limited to, overtime wages and minimum wages, to which they were entitled to under California
10 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
11 Aggrieved Employees lower wages than those they were entitled to while purporting that
12 PLAINTIFF and other Aggrieved Employees were properly paid.

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

18 88. **Unlawful Inquiries into Salary History:** Based on information and belief,
19 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal
20 their salary history when applying for employment with DEFENDANTS. For example, when
21 PLAINTIFF applied for employment with DEFENDANTS, PLAINTIFF was required to fill out an
22 application that requested, among other things, the following information: Name and address of
23 former employer, length of former employment relationship, and the “starting” and “ending”
24 “hourly rate/salary” and/or “base rate of pay” of the former employment relationship. Based on
25 information and belief, DEFENDANTS required other Aggrieved Employees to disclose the same
26 or similar information, in violation of Labor Code section 432.3. Moreover, by requiring Aggrieved
27 Employees to disclose prior salary information in a written application for employment,
28 DEFENDANTS violated Labor Code section 432.5 by requiring Aggrieved Employees to agree in

1 writing to disclose their salary history as a condition of obtaining employment with DEFENDANTS,
2 in violation of California law.

3 **89. Unlawful Agreements-Unlawful Criminal and Financial Background Checks.**

4 Based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved
5 Employees to agree in writing to unlawful conditions of employment, such as, but not limited to,
6 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
7 employment, in violation of Labor Code section 432.5. Based on further information and belief,
8 DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in writing to
9 unlawful background checks not in conformity with the requirements of Investigative Consumer
10 Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA") and/or the Fair Credit
11 Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), in violation of Labor Code section 432.5.
12 Based on information and belief, DEFENDANTS asked about arrests not resulting in convictions
13 on its employment application, in violation of Labor Code section 432.7 and or otherwise unlawfully
14 asked about criminal history/unlawfully required the disclosure of criminal history prior to
15 extending a conditional offer of employment and required PLAINTIFF and other Aggrieved
16 Employees to agree in writing to the unlawful disclosures as a condition of employment, in violation
17 of Labor Code section 432.5.

18 **FIRST CAUSE OF ACTION**

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

20 **2698, ET SEQ.**

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

23 90. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 91. **Meal Period Violations.** California law requires employers to provide employees a
25 duty-free, uninterrupted, thirty-minute meal period when an employee works more than five (5)
26 hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab.
27 Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant*
28 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Upon information and belief, PLAINTIFF did not

1 sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

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

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

18 94. Employers must pay employees an additional hour of wages at the employees'
19 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
20 meal period, first meal period provided after five (5) hours, second meal period provided after 10
21 hours). Lab. Code section 226.7; all applicable IWC Wage Orders, section 11(B) ("If an employer
22 fails to provide an employee a meal period in accordance with the applicable provision of this Order,
23 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
24 compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th
25 1004.

26 95. DEFENDANTS have a consistent policy and/or practice of not providing lawful
27 meal periods to PLAINTIFF and Aggrieved Employees and/or providing compensation in lieu
28 thereof. As explained above, PLAINTIFF and other Aggrieved Employees were consistently unable

1 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
2 forced to take late meal periods, interrupted meal periods and/or work through part or all their
3 purported meal periods. Moreover, DEFENDANTS failed to keep accurate records of meal period
4 start and end times.

5 96. Based on information and belief, DEFENDANTS rounded the start and end times of
6 employees' meal periods and/or automatically deducted thirty minutes per shift despite having
7 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
8 receive compliant meal periods.

9 97. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
10 periods in violation of California law or failed to pay the proper meal period premium for failure to
11 incorporate all non-discretionary remuneration including but not limited to, non-discretionary
12 bonuses/incentive pay and/or shift differential pay and/or other non-discretionary compensation into
13 the regular rate of compensation for purposes of calculating the owed meal period premium.

14 98. These unlawful meal period policies and practices result in violations of Labor Code
15 sections 226.7, 512, and 1198-1199, and all applicable wage orders, section 11. These violations
16 subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1 and 2699, and all
17 applicable Wage Orders, section 20. These practices result in further violations such as violations
18 of Labor Code section 1174 as discussed above, 1198-1199, 226.6 and other violations discussed
19 below.

20 99. **Rest Period Violations.** Labor Code section 226.7 and all applicable IWC Wage
21 Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net
22 minutes for every four hours worked or major fraction thereof. Such rest periods must be in the
23 middle of the four-hour period "insofar as practicable." In *Brinker v. Restaurant Corp. v. Superior*
24 *Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a
25 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for
26 shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10
27 hours up to 14 hours. (Id. at 1029). The rest period requirement obligates employers to permit and
28 authorize employees to take off-duty rest periods, meaning employers must relieve employees of all

1 duties and relinquish control over how employees spend their time. *Augustus v. ABM Security*
2 *Services, Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the
3 employer must pay the employee one hour of pay at the employee's regular rate of compensation
4 for each workday the employer did not provide at least one legally required rest period, pursuant to
5 Labor Code section 226.7, and all applicable IWC Wage Orders, section 12(B).

6 100. As explained above, DEFENDANTS did not properly authorize and provide
7 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
8 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
9 middle of the work period, as required by law. Any purported rest periods were consistently
10 interrupted, cut short, on duty, restricted to premises and/or late.

11 101. Moreover, based on information and belief, DEFENDANTS failed to pay
12 PLAINTIFF and other Aggrieved Employees an additional hour of pay at PLAINTIFF's and other
13 Aggrieved Employees' respective regular rates of compensation for each missed or improper rest
14 period. DEFENDANTS either failed to may any rest period premium at all or failed to pay the
15 proper rest period premium for failure to incorporate all non-discretionary remuneration including
16 but not limited to, non-discretionary bonuses/incentive pay and/or shift differential pay and/or other
17 non-discretionary compensation into the regular rate of compensation for purposes of calculating
18 the owed rest period premium.

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

22 103. **Unpaid Minimum and Overtime Wages.** California law provides that employees
23 in California must be paid for all hours worked, up to forty per week or eight (8) per day, at a regular
24 rate that is no less than the mandated minimum wage. See Labor Code section 1197 and the
25 applicable Wage Order. The minimum wage standard applies to each hour employees worked for
26 which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by
27 an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or
28 not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135

1 Cal.App.4th 314, 324.

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

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

18 106. As explained above, DEFENDANTS failed to compensate PLAINTIFF and other
19 Aggrieved Employees for all hours worked by virtue of DEFENDANTS' automatic deductions and
20 time rounding policies, payment according to scheduled hours worked instead of actual time
21 worked, mandated pre-shift/post shift/ and/or other off-the-clock work policies and/or practices and
22 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
23 unlawful practices for missed or improper meal periods. This regular performance of off-the-clock
24 work resulted in the underpayment of minimum wages owed to Aggrieved Employees, the
25 underpayment of overtime wages for those Aggrieved Employees who worked more than eight (8)
26 hours per workday or more than forty per week, the underpayment of "double time" wages for those
27 Aggrieved Employees who worked more than twelve (12) hours per workday or more than eight (8)
28 hours on the seventh consecutive day of work, as well as record-keeping violations.

1 107. Based on information and belief, DEFENDANTS further violated California's
2 overtime wage laws by, including but not limited to, failing to incorporate all non-discretionary
3 compensation, including but not limited to, non-discretionary bonus compensation/incentive pay
4 and/or shift differential pay and/or other non-discretionary compensation into the regular pay rate
5 used to calculate the overtime rate of pay. Failing to include all non-discretionary compensation into
6 the regular pay rate used to calculate the owed overtime rate resulted in a miscalculation of the
7 overtime wage rate, resulting in the underpayment of overtime (and "double time") wages owed to
8 Aggrieved Employees.

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

19 109. DEFENDANTS knew or had reason to know Aggrieved Employees were working
20 during unpaid meal periods, prior to clocking in/after clocking out/ otherwise working off-the-clock
21 and not being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to
22 provide PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the
23 wage statements provided by DEFENDANTS do not accurately reflect, inter alia, the correct total
24 hours worked. Due to, including but not limited to, DEFENDANTS' time-rounding and auto-
25 deduction policies and practices, payment according to scheduled hours rather than actual hours
26 worked, and other mandated off-the-clock work policies and practices described herein,
27 DEFENDANT'S wage statements fail to reflect the true total hours worked by PLAINTIFF and the
28 Aggrieved Employees worked, as required under Labor Code section 226(a). Failure to list all hours

1 worked on a wage statement, gives rise to an inference of injury under Labor Code section 226
2 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

3 110. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
4 statements to Aggrieved Employees that failed to list all applicable hourly rates in effect during the
5 pay period, due to, including but not limited to, failing to list an hourly rate/overtime rate at all
6 and/or failing to list the correct overtime rate because DEFENDANTS did not incorporate all non-
7 discretionary compensation, such as, but not limited to, non-discretionary bonuses/incentive pay
8 and/or shift differential pay and/or other non-discretionary compensation into the regular pay rate
9 for purposes of calculating the owed overtime rate.

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

13 112. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
14 they could not easily determine whether they received all wages owed to them and whether they
15 were paid for all hours worked.

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

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

23 115. These violations subject DEFENDANTS to civil penalties under Labor Code section
24 226. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay
25 period during which the statute provisions were violated. ¹

26 116. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave
27 laws including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to

28

¹ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
2 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (by
3 virtue of DEFENDANTS' meal period auto-deduction and time rounding practices and off-the-
4 clock work described herein), and/or failure to incorporate all forms of non-discretionary
5 remuneration into the sick pay calculation.

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

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

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

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

25 121. These practices violated California's sick leave laws, Labor Code section 245, et
26 seq.

27 122. On information and belief, PLAINTIFF alleges that all of these practices were
28 experienced and continue to be experienced by other Aggrieved Employees.

1 123. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA,
2 including but not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as
3 permitted by law.

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

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

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

1 and failed to record PLAINTIFF's and other Aggrieved Employees' meal periods.
2 DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and
3 the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all
4 applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under
5 the Labor Code, including without limitation sections 1174.5 and 2699. Each violation of each
6 Labor Code section and Wage Order provision, for each aggrieved employee, results in a
7 separate civil penalty.

8 127. **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.

1 128. Based on information and belief, DEFENDANTS shifted the costs of doing business
2 onto Aggrieved Employees by requiring them to pay for business expenses, including but not
3 limited to, uniforms and/or the use of Aggrieved Employees' personal mobile phone and data usage
4 for work related purposes including but not limited to receiving and responding to work related
5 messages and/or phone calls. For example, PLAINTIFF was required to clock in and out for her
6 shifts using her personal cell phone/mobile device to log into an application called Paychex that
7 DEFENDANTS required PLAINTIFF download onto her personal cell phone/mobile device.
8 PLAINTIFF was also required to use her personal cell phone/mobile device for navigation purposes
9 while picking up and dropping off clients. Additionally, PLAINTIFF was frequently required to
10 respond to calls and/or messages from PLAINTIFF's supervisor on PLAINTIFF's personal cell
11 phone during and outside of PLAINTIFF's scheduled shift times to discuss work-related activities.
12 PLAINTIFF was not reimbursed for this business use of her personal cell phone/mobile device in
13 any manner. Based on information and belief, other Aggrieved Employees were also required by
14 DEFENDANTS to download work applications, make and/or receive work-related calls and/or
15 messages and/or use their personal cellphones/mobile devices for other work-related purposes
16 without receiving reimbursement from DEFENDANTS. Based on information and belief,
17 DEFENDANTS did not reimburse Aggrieved Employees for the cost of undergoing employer-
18 mandated testing and/or certifications (e.g., Covid testing), including but not limited to, the cost of
19 purchasing the test/cost of obtaining the certification, and/or the cost of traveling and/or using a
20 personal vehicle to and from a testing/certification site. For example, DEFENDANTS required
21 PLAINTIFF to undergo Covid testing once per week without compensating PLAINTIFF for the
22 costs associated with having to use her personal vehicle to get to and from the testing site each week.

23 129. Based on further information and belief, DEFENDANTS required Aggrieved
24 Employees to use their personal vehicles for additional work-related purposes, including but not
25 limited to, for traveling between DEFENDANTS' centers/facilities for work without reimbursing
26 them for the personal vehicle expenses they incurred in connection therewith.

27 130. As such, DEFENDANTS failed and continues to fail to compensate for vehicle-
28 related expenses at the Internal Revenue Service (IRS) mandated per mile compensation rate for the

1 relevant time period.

2 131. Based on information and belief, DEFENDANTS required Aggrieved Employees
3 and to pay for the purchase and/or maintenance of uniforms/work clothing and/or pay for the
4 purchase of employer-mandated continued education trainings/certifications.

5 132. Based on information and belief, DEFENDANTS required Aggrieved Employees to
6 use personal devices to complete off-the-clock certifications/trainings/continued education courses
7 as mandated by DEFENDANTS.

8 133. DEFENDANTS' failure to provide Aggrieved Employees with full
9 reimbursement for all reasonable expenses associated with carrying out their duties required
10 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation
11 of Labor Code section 2802 and section 9 of all applicable IWC Wage orders. Accordingly,
12 this constitutes a PAGA violation based on violations of Labor Code section 2802 and section
13 9 of the applicable wage order.

14 134. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
15 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
16 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
17 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
18 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
19 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and
20 unreimbursed business expenses, result in separate violations of sections 1198 and 1199, which
21 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

22 135. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
23 employer's refusal to pay wages due and payable and/or DEFENDANTS' denial of the validity of
24 any claim to wages due. DEFENDANTS have violated this section by, inter-alia, failing to pay
25 PLAINTIFF and the Aggrieved Employees for all hours worked at the proper wage rate and by
26 failing to pay PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for
27 each meal or rest period not provided/that was invalid. These violations subject DEFENDANTS to
28 civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for

1 each aggrieved employee, for each pay period during which the statute provisions were violated.

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

9 137. **Untimely Payment of Final Wages.** DEFENDANTS failed to timely Aggrieved
10 Employees all wages that were due and owing upon termination or resignation. Labor Code sections
11 201 and 202, together require employers to pay all wages immediately upon discharge and/or within
12 72 hours of an employees' resignation. Upon separation of employment, Aggrieved Employees'
13 final paychecks were not timely provided. Based on information and belief, DEFENDANTS did not
14 pay final wages in accordance with the timing requirements set forth in Labor Code sections 201
15 and 202. Based on information and belief, DEFENDANTS provide final wages to Aggrieved
16 Employees on the regular pay day without regard to the timing requirements of Labor Code sections
17 201-202.

18 138. Moreover, upon separation of employment, Aggrieved Employees' final paychecks,
19 once provided, did not include all wages owed as they were devoid of, including but not limited to,
20 all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed paid time
21 off wages at the properly accrued rates. DEFENDANTS also willfully failed to timely pay all wages
22 upon separation of employment because it was not paying sick pay at the appropriate rates due to,
23 including but not limited to, failing to incorporate all non-discretionary compensation into the sick
24 pay calculation.

25 139. **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5,**
26 **and 432.** *Time and Pay Records:* Labor Code section 226 and all applicable IWC Wage Orders,
27 section 7 require that employers keep the following information on file for each employee for a
28 minimum of three years: The employee's dates of employment; the employee's hourly rates and the

1 corresponding number of hours worked by the employee at each hourly rate, when the employee
2 begins and ends each work period (including meal periods) and split intervals; total hours worked
3 by the employee; all deductions; gross wages earned; and net wages earned.

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

13 141. Personnel Records. In addition to their right to time and pay records, employees, and
14 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
15 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
16 section 432 further specifies that employers must furnish copies of all employment records bearing
17 the employee’s signature. Labor Code section 1198.5 also requires that the file be made available
18 for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days
19 from the date the employer receives a written request.” An employer’s failure to comply within this
20 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
21 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

22 142. Based on information and belief, DEFENDANTS fail to produce or make available
23 Aggrieved Employees’ personnel records time and/or pay records when requested pursuant to Labor
24 Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
25 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

26 143. **Unlawful Inquiries into Salary History:** Based on information and belief,
27 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal
28 their salary history when applying for employment with DEFENDANTS. For example, when

1 PLAINTIFF applied for employment with DEFENDANTS, PLAINTIFF was required to fill out an
2 application that requested, among other things, the following information: Name and address of
3 former employer, length of former employment relationship, and the “starting” and “ending”
4 “hourly rate/salary” and/or “base rate of pay” of the former employment relationship. Based on
5 information and belief, DEFENDANTS required other Aggrieved Employees to disclose the same
6 or similar information, in violation of Labor Code section 432.3. Moreover, by requiring Aggrieved
7 Employees to disclose prior salary information in a written application for employment,
8 DEFENDANTS violated Labor Code section 432.5 by requiring Aggrieved Employees to agree in
9 writing to disclose their salary history as a condition of obtaining employment with DEFENDANTS,
10 in violation of California law.

11 144. **Background Check Violations/Unlawful Agreements/Unlawful Inquiries into**
12 **Criminal History.** Labor Code section 432.5 provides that “no employer...shall require any
13 employee or applicant for employment to agree, in writing, to any term or condition which is known
14 by such employer...to be prohibited by law.” Based on information and belief, DEFENDANTS
15 required PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of
16 employment, such as, but not limited to, unlawful criminal and/or financial checks as a condition of
17 obtaining and/or continuing employment in violation of Labor Code section 432.5.

18 145. The California Labor Code places certain procedural and substantive limits on an
19 employer's ability to conduct employee background checks and on how employers can use the
20 information they obtain through these background checks. Upon information and belief,
21 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit or agree to submit
22 to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
23 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
24 and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in
25 writing to unlawful background checks not in conformance with the requirements of the
26 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
27 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
28 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of

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

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

20 147. Upon information and belief, DEFENDANTS, in violation of California law,
21 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
22 (“FEHA”), asked PLAINTIFF and Aggrieved Employees about convictions prior to extending an
23 offer of employment and/or otherwise impermissibly inquired into criminal history on its
24 employment application in violation of California law.

25 148. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
26 Code 432.7. By asking about convictions at the application phase or prior to extending an
27 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
28 Labor Code 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to disclose

1 arrests and/or convictions as a condition of employment.

2 149. These violations subject DEFENDANTS to civil penalties under the Labor Code,
3 including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each
4 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
5 civil penalty.

6 150. Under the provisions of PAGA and the above-mentioned Labor Code sections,
7 including but not limited to, Labor Code sections 201, 202, 203, 210, 216, 221-223, 225.5, 226,
8 226.3, 226.7, 227.3, 245-248.5, 256, 432, 432.3, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1024.5,
9 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage
10 Orders as well as all interpretations of these laws by California Courts and administrative bodies, as
11 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
12 penalties:

- 13 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
14 relevant California Labor Code provisions listed herein only if permitted by the
15 PAGA statute, pursuant to Labor Code section 2699(a); and
16 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
17 violations without a civil penalty recoverable under the PAGA, all in the default
18 amounts provided by Labor Code section 2699(f).
19 c. The proper measure of penalties under PAGA is the number of violations,
20 whether those violations were committed as against Plaintiff or any Aggrieved
21 Employee, whether a party to this action or not.

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

24
25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of herself,
27 the State of California, and the Aggrieved Employees:
28

- 1 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
2 25% payable to Aggrieved Employees);
3 2. For reasonable attorney's fees and costs of suit; and
4 3. For such other and further relief that the Court deems just and proper.
5

6 Dated: November 7, 2022

CROSNER LEGAL, PC

7
8 By: 
9 Michael R. Crosner, Esq.
10 Zachary M. Crosner, Esq.
11 Jamie K. Serb, Esq.
12 Michael W. Jones, Esq.
13 Attorneys for Plaintiff,
14 FAATIMAH BEY
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EXHIBIT

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Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

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August 31, 2022

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Shimoff Law Corporation,
Agent for Service of Process for:
Crossroads of Choice, Inc.
4 West Redlands Boulevard, 2nd Floor
Redlands, CA 92373

Crossroads of Choice, Inc.
Attn: Human Resources/ Legal
Department
P.O. Box 9116
Redlands, CA 92375

Crossroads of Choice, Inc.
Attn: Human Resources/ Legal Department
300 East State Street, Suite 440
Redlands, CA 92373

Crossroads of Choice, Inc.
Attn: Human Resources/ Legal
Department
11130 White Birch Drive
Rancho Cucamonga, CA 91730

Shimoff Law Corporation,
Agent for Service of Process for:
Community Crossings, Inc.
4 West Redlands Boulevard, 2nd Floor
Redlands, CA 92373

Community Crossings, Inc.
Attn: Human Resources/ Legal
Department
P.O. Box 9116
Redlands, CA 92375

Community Crossings, Inc.
Attn: Human Resources/ Legal Department
300 East State Street, Suite 440
Redlands, CA 92373

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Crossroads of Choice, Inc.; Community Crossings, Inc.
Date: August 31, 2022
Subject: *Fatimaah Bey v. Crossroads of Choice, Inc., et al*

Introduction

This office represents COMPLAINANT, Fatimaah Bey (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 entities and individual managing agents of said entities: Crossroads of Choice, Inc. and Community Crossings, Inc. (hereinafter, these entities and their managing agents are collectively referred to 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 in California 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 in California 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 and/or entity mailing address 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 2699.3 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 the 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 section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of 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.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that 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, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 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 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 violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 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 employer(s) who violated COMPLAINANT's 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, any 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 §§ 203, 226, 226.7, and 1194 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 owns, operates or otherwise manages companies that provide services for the elderly and persons with disabilities, including but not limited to, non-emergency medical transportation services throughout locations in Southern California with facilities located in, including but not limited to, Rancho Cucamonga, San Jacinto, and Redlands. 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. Although

EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a transportation driver and/or similar title from on or around August 24, 2021 through in or around the end of September 2021/beginning of October 2021. COMPLAINANT worked primarily out of EMPLOYER's location in San Jacinto, California. COMPLAINANT regularly worked at least seven (7) hours per day, at least (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

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 fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) 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; (7) 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; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) 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; (11) 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; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) 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 of 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; (14) required and continues to

require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose their salary history; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law 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. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, 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, time records of split shift intervals and accurate itemized wage statements.

Based on information and belief, 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 time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER 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.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, EMPLOYER further failed, and continues to fail, to accurately record split shift intervals.

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

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.

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 all applicable IWC 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 NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

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

Time and Pay Records

Labor Code section 226 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 shift 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).

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

Based on information and belief, EMPLOYER fails to timely 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 January 28, 2022, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. A second request for payroll and personnel records was sent on May 4, 2022. 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.

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.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

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. 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 unlawful 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 § 226.7; all applicable IWC Wage Orders, §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.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, 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 understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT's meal periods were regularly interrupted by management to receive instructions for work-related tasks that COMPLAINANT was required to perform while off the clock during purportedly off-duty meal periods. Such off-the-clock work tasks that COMPLAINANT was directed by her EMPLOYER to perform during purportedly off-duty meal periods included, but were not limited to, driving out to pick up and/or drop off clients, performing work-related certification tasks, making deliveries and/or running errands as directed by EMPLOYER, including but not limited to, picking up and/or dropping off clients' work packets and/or completing other work tasks. EMPLOYER failed to compensate COMPLAINANT one additional hour of pay for each workday that one or more statutory meal periods was not properly provided, and is therefore liable for civil penalties under California Labor Code sections 558 and 2698 *et seq.*

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of their scheduled shifts, including but not limited to, during purportedly off-duty meal periods, due to work-related phone calls and/or messages they received and were required to respond to, including but not limited to, communications from supervisors to discuss changes in pick-up and/or drop-off schedule and/or otherwise coordinate work activities, resulting in consistently interrupted and/or shortened meal periods.

Based on information and belief, other 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, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

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 unpaid meal periods.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which

EMPLOYER failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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 which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, 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. For example, on occasions when COMPLAINANT was required to work more than ten (10) hours, EMPLOYER failed to inform COMPLAINANT of her right to receive a second meal period, and COMPLAINANT did not receive a second meal period when she worked more than ten hours.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other 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 information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. 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 NON-EXEMPT 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/or auto-deduction policies and

practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

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 lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful 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, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) 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 NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations 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, §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 length, two 10-minute rest periods for shifts 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. 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 §226.7; applicable IWC Wage Order, §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

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §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").

one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant 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 breaks per California Labor Code. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT was consistently unable to take any rest periods due to understaffing and the nature and constraints of her job duties, including but not limited to the need to monitor, supervise, and/or instruct elder and dependent adults she was overseeing and/or the need to keep up with her routes/pick-up/drop-off schedule. The elder and dependent adults in EMPLOYER's programs had to be supervised at all times, yet EMPLOYER frequently understaffed the number of employees needed to supervise/monitor the elder and dependent adults. As such, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were frequently unable to take duty-free rest periods due to understaffing and lack of relief workers. COMPLAINANT was frequently deprived of any opportunity to take a rest period.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked more than ten hours, she was not provided with any form of a third rest period.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period

in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. 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 lawful 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, bonuses, shift differential 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 all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §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.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.” Labor Code section 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. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. 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

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §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”).

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 other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, EMPLOYER had and have a continuous policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to travel between EMPLOYER's facility locations without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time. For example, based on information and belief, due to frequent scheduling issues and/or understaffing, NON-EXEMPT AGGRIEVED EMPLOYEES were often required after working at their scheduled facility location to cover a shift at another of EMPLOYER's facilities/centers but were not compensated for the time spent driving to the second facility, resulting in the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, EMPLOYER's excessive expectation that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES complete their tasks at all costs resulted in EMPLOYER requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to deduct 30 minutes of time to appear as if they took their meal periods. But such deducted time work expended by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES qualified as "hours worked" within the meaning of the California Labor Code and IWC Wage Orders. EMPLOYER was obligated to pay wages for all such "hours worked" but failed to do so.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to obtain Covid-related testing outside of their scheduled shift times without compensating them for the time spent completing EMPLOYER's testing requirements. For example, EMPLOYER required COMPLAINANT to undergo Covid testing outside of her scheduled shift times once per week without compensating COMPLAINANT for the time spent

fulfilling EMPLOYER's testing requirements. COMPLAINANT estimates this amounted to at least forty-five minutes of off-the-clock work each week that was neither recorded nor compensated, resulting in the underpayment of minimum wages owed to COMPLAINANT.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete other off-the-clock work tasks outside of their scheduled shifts, including but not limited to, during purportedly off-duty meal periods, due to work-related phone calls and/or messages they received and were required to respond to, including but not limited to, communications from supervisors to discuss changes in pick-up and/or drop-off schedules and/or otherwise coordinate work activities, resulting in consistent off-the-clock work and the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever their work schedules were interrupted by non-paid non-working periods established by EMPLOYER, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage Orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday...")

Based on information and belief, EMPLOYER failed to pay 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. Moreover, based on information and belief, EMPLOYER required COMPLAINANT to submit to mandatory testing, trainings and/or certification(s). Based on information and belief, this work time was completed off-the-clock and was not compensated. Moreover, based on information and belief, COMPLAINANT was not compensated for time spent completing EMPLOYER-mandated testing, trainings and/or certifications.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other 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. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and 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 more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and 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 more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work 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, §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

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 §510; IWC Wage Order All applicable IWC Wage Orders §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 of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, 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 automatic deduction and time rounding policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to EMPLOYER's premises and/or subject to EMPLOYER's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §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").

Based on information and belief, EMPLOYER failed and continues to fail 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's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular rate 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.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §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.⁵

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other 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/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods that were restricted to EMPLOYER's premises) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, 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.

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §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").

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

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and 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 unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result 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 other 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 and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's 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(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in

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

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 COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the 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 COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), 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).

EMPLOYER's failure to accurately list all hours worked 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.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also 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 COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer. For example, wage statements EMPLOYER issued to COMPLAINANT identify "Crossroads of Choice Inc" as the employer. However, documents in COMPLAINANT's personnel file", including but not limited to, employee acknowledgment(s) of employment policies, COMPLAINANT's employment application and EMPLOYER's Labor Code Section 2810.5 Notice to Employee, all identify "Crossroads of Choice Transportation, Inc." and/or "Crossroads of Choice Transportation" as the employer. Still other documents in COMPLAINANT's personnel file, including but not limited

to, documents sent to and/or received from government agencies regarding COMPLAINANT's employment identify "Community Crossings, Inc." and/or "Community Crossings Inc." as the employer.

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/or address of the legal entity of the employer.

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 each 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, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate 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 section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's 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, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: 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 of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not

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

limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other 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. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 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 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 untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES 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 and/or paid time off. 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, all owed sick leave and/or paid time off wages at the properly accrued rates. For example, based on information and belief, EMPLOYER did not provide COMPLAINANT with her final paycheck on her date of termination, instead requiring COMPLAINANT to wait until the next regularly scheduled pay date to receive her final paycheck, and COMPLAINANT's final paycheck once received did not include all wages owed as it was devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and/or 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 EXEMPT AGGRIEVED EMPLOYEE and each NON-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

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”).

any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” See Cal. Lab. Code § 2804.

Based on information and belief, EMPLOYER did not reimburse NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES for the cost of undergoing EMPLOYER-mandated testing and/or certifications (e.g., Covid testing), including but not limited to, the cost of purchasing the test/cost of obtaining the certification, and/or the cost of traveling and/or using a personal vehicle to and from a testing/certification site. For example, EMPLOYER required COMPLAINANT to undergo Covid testing once per week without compensating COMPLAINANT for the costs associated with having to use her personal vehicle to get to and from the testing site each week.

Based on further information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles for additional work-related purposes, including but not limited to, for traveling between EMPLOYER’s centers/facilities for work without reimbursing them for the personal vehicle expenses they incurred in connection therewith.

As such, EMPLOYER failed and continues to fail to compensate for vehicle-related expenses at the Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period.

Based on information and belief, 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 the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. For example, COMPLAINANT was required to clock in and out for her shifts using her personal cell phone/mobile device to log into an application called Paychex that EMPLOYER required COMPLAINANT download onto her personal cell phone/mobile device. COMPLAINANT was also required to use her personal cell phone for navigation purposes while picking up and dropping off clients. Additionally, COMPLAINANT was frequently required to respond to calls and/or messages from COMPLAINANT’s supervisor on COMPLAINANT’s personal cell phone during and outside of COMPLAINANT’s scheduled shift times to discuss work-related activities. COMPLAINANT was not reimbursed for this personal cell phone/personal device use in any manner. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required by EMPLOYER to download work applications, make and/or receive work-related calls and/or messages and/or use their personal cellphones/mobile devices for other work-related purposes without receiving reimbursement from EMPLOYER.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to pay for the purchase and/or maintenance of uniforms/work clothing and/or pay for the purchase of EMPLOYER-mandated continued education trainings/certifications.

Based on information and belief, EMPLOYER required NON- EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use personal devices to complete off-the-clock certifications/trainings/continued education courses as mandated by EMPLOYER.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

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

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

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. For example, when COMPLAINANT applied for employment with EMPLOYER, COMPLAINANT was required to fill out an application that requested, among other things, the following information: Name and address of former employer, length of former employment relationship, and the "starting" and "ending" "hourly rate/salary" and/or "base rate of pay" of the former employment relationship. 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 including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

Based on information and belief, 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 also required 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.

Based on information and belief, EMPLOYER required 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 (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring 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 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 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.

By requiring 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 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 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. For example,

EMPLOYER'S application COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were required to fill out asks, "Have you ever been convicted of a felony".

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 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 section 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.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, 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 § 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 requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 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:

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

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in cursive script that reads "Kiara Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC