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14 and on behalf of all others similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SANTA CRUZ**

17 JEFFREY HOXSIE, as an individual and  
18 on behalf of all others similarly situated,

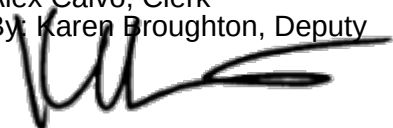
19 Plaintiff,

20 v.

21 HOUSING MATTERS, a California  
22 Nonprofit Corporation; and DOES 1-100,  
23 inclusive,

24 Defendants.

ELECTRONICALLY FILED  
Superior Court of California  
County of Santa Cruz  
10/20/2022 3:46 PM  
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Case No.: 22CV01797

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition**
9. **Violation of the Private Attorneys General Act of 2004**

**DEMAND FOR JURY TRIAL**

1 Plaintiff, JEFFREY HOXSIE (“PLAINTIFF”), as an individual and on behalf of, the State  
2 of California, all other similarly situated Class Members (defined below) and Aggrieved Employees  
3 (defined below), hereby files this First Amended Complaint against Defendants HOUSING  
4 MATTERS, a California Nonprofit Corporation; and DOES 1-100, inclusive, (collectively referred  
5 to herein as "DEFENDANTS"). PLAINTIFF is informed and believes, and on the basis of that  
6 information and belief, alleges as follows:

### 7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is  
9 proper in the County of Santa Cruz, California, pursuant to California Code of Civil Procedure  
10 section 395.5 because DEFENDANTS employed PLAINTIFF to work in the County of Santa Cruz,  
11 and some of the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this county.  
12 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a  
13 PAGA action is proper in any county where the defendants committed Labor Code violations against  
14 some of its employees).

### 15 **THE PARTIES**

16 2. PLAINTIFF resides in Santa Cruz County, in the State of California. PLAINTIFF  
17 worked for DEFENDANTS in the State of California as a non-exempt employee during the relevant  
18 period.

19 3. Defendant HOUSING MATTERS, is a California non-profit corporation, that at all  
20 relevant times, was authorized to do business within the State of California and is doing business in  
21 the State of California. DEFENDANTS own, operate, or otherwise manage a non-profit  
22 organization that partners with individuals and families to create pathways out of homelessness and  
23 into permanent housing, providing food, shelter, medical services, among other services for the local  
24 homeless population. Based on information and belief, DEFENDANTS’ campus located on Coral  
25 St. in Santa Cruz, CA, has four emergency and transitional housing shelters for nearly 230 people,  
26 a medical clinic, and a 12-bed medical respite care facility.<sup>1</sup>

27 4. The true names and capacities of the DOE Defendants sued herein as DOES 1  
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<sup>1</sup> See <https://housingmatterssc.org/about/our-mission/>. Last visited August 12, 2022.

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

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

#### 16                                   **JOINT LIABILITY**

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

1 conditions to render that business liable as a joint employer. See, *Medina v. Equilon Enterprises*,  
2 LLC, 68 Cal. App. 5th 868 (2021); “[i]f the putative joint employer instead exercises enough control  
3 over the intermediary entity to indirectly dictate the wages, hours, or working conditions of the  
4 employee, that is a sufficient showing of joint employment,” Id. at 875 [emphasis added].

5         7. During PLAINTIFF’s employment with DEFENDANTS, PLAINTIFF and the Class  
6 Members and Aggrieved Employees were jointly employed by these DEFENDANTS for purposes  
7 of the Wage Orders, under the alternative definitions of “to employ” adopted by the California  
8 Supreme Court in *Martinez, supra*. As discussed below, these DEFENDANTS (1) exercised control  
9 over wages, hours and working conditions of PLAINTIFF and the Class Members and Aggrieved  
10 Employees; (2) suffered or permitted PLAINTIFF and the Class Members and Aggrieved  
11 Employees to work for them; and (3) engaged PLAINTIFF and the Class Members and Aggrieved  
12 Employees to work for them.

13         8. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times  
14 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized  
15 human resources as a set forth herein. As a result, DEFENDANTS utilized the same unlawful wage  
16 and hour policies and practices across all of their California locations/facilities and subjected all of  
17 the Class Members and Aggrieved Employees to these same policies and practices regardless of the  
18 location(s) or facilities where they worked in California.

19         9. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant  
20 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members  
21 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and cause of  
22 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class  
23 Members’ and Aggrieved Employees’ wages, hours and working conditions, and/or suffered or  
24 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be  
25 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.  
26 Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS created a  
27 uniform set of policies, practices and/or procedures concerning, *inter alia*, hourly and overtime pay,  
28 time-keeping practices, meal and rest periods, payment of wages, hours, background check inquiries

1 and practices, and working conditions that were distributed to, and/or applied to PLAINTIFF and  
2 the Class Members and Aggrieved Employees, and further that DEFENDANTS uniformly  
3 compensated and controlled the wages of PLAINTIFF and the Class Members and Aggrieved  
4 Employees in a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the  
5 Class Members and Aggrieved Employees that each was an "at-will" employee of DEFENDANTS,  
6 and that DEFENDANTS collectively retained the right to terminate PLAINTIFF and the Class  
7 Members' and Aggrieved Employees' employment with or without cause. Upon information and  
8 belief, DEFENDANTS further collectively represented to PLAINTIFF and the Class Members and  
9 Aggrieved Employees in writing the details of their compensation, and the manner in which they  
10 were to take meal and rest periods, the procedures required by DEFENDANTS collectively for  
11 recordation of hours worked and the policies applicable to PLAINTIFF and the Class Members and  
12 Aggrieved Employees by which DEFENDANTS collectively would evaluate the wage rates of  
13 PLAINTIFF and the Class Members and Aggrieved Employees.

14 10. Thus, DEFENDANTS collectively exercised the right to control the wages, hours  
15 and working conditions of PLAINTIFF and the Class Members and Aggrieved Employees. As such,  
16 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and  
17 the Class Members' and Aggrieved Employees' employment, including the instrumentality that  
18 resulted in the illegal conduct for which PLAINTIFF seek relief in this Complaint.

### 19 **CLASS ALLEGATIONS**

20 11. PLAINTIFF brings this action on behalf of PLAINTIFF and all others similarly  
21 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF  
22 seeks to represent are defined as follows based on the following subclasses and referred to  
23 collectively as the "Class Members":

24 All current and former non-exempt employees that worked directly or via a staffing  
25 agency for DEFENDANTS in California at any time within the four years and 178 days  
26 prior to the filing of the initial Complaint"<sup>2</sup>("Class Period").

27 \_\_\_\_\_  
28 <sup>2</sup> In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.

- 1 i. Numerosity. While the exact number of Class Members is unknown to PLAINTIFF at  
2 this time, the class is so numerous that the individual joinder of all members is  
3 impractical under the circumstances of this case.
- 4 ii. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because  
5 common questions of law and fact predominate over individual issues. Common  
6 questions include, but are not limited to, the following: (1) whether DEFENDANTS  
7 understated hours worked and failed to pay all amounts due to PLAINTIFF and the  
8 Class Members for wages earned, including minimum wages and overtime wages under  
9 California law; (2) whether DEFENDANTS provided PLAINTIFF and the Class  
10 Members with all meal periods or premium payments in lieu thereof, in compliance  
11 with California law; (3) whether DEFENDANTS provided PLAINTIFF and the Class  
12 Members with all rest periods or premium payments in lieu thereof, in compliance with  
13 California law; (4) whether DEFENDANTS provided PLAINTIFF and the Class  
14 Members with accurate, itemized wage statements in compliance with California law,  
15 displaying, including but not limited to, the total hours worked during the pay period;  
16 (5) whether DEFENDANTS timely paid the Class Members all wages due upon  
17 separation of employment; (6) whether DEFENDANTS failed to reimburse  
18 PLAINTIFF and the Class Members for all business expenses; and (7) whether  
19 DEFENDANTS violated California Business and Professions Code sections 17200, et  
20 seq.
- 21 iii. Ascertainable Class. The proposed class is ascertainable as its members can be  
22 identified and located using information in DEFENDANTS' business, payroll and  
23 personnel record.
- 24 iv. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.  
25 PLAINTIFF suffered a similar injury as the other Class Members as a result of  
26 DEFENDANT's common practices regarding, *inter-alia*, failure to calculate and pay  
27 all owed minimum and overtime wages, failure to provide proper meal and rest periods  
28 or premium compensation in lieu thereof, failure to provide accurate wage statements,

1 failure to reimburse business expenses, and failure to timely pay all wages upon  
2 separation of employment.

- 3 v. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the Class  
4 Members. PLAINTIFF has no interests adverse to the interests of the other Class  
5 Members. Counsel who represent PLAINTIFF are competent and experienced in  
6 litigating similar class action cases and are California lawyers in good standing. Counsel  
7 for PLAINTIFF have the experience and resources to vigorously prosecute this case.
- 8 vi. Superiority. A class action is superior to other available means for the fair and efficient  
9 adjudication of this controversy since individual joinder of all members of the class is  
10 impractical. Class action treatment will permit a large number of similarly situated  
11 persons to prosecute their common claims in a single forum simultaneously, efficiently,  
12 and without the unnecessary duplication of effort and expense that numerous individual  
13 actions would engender. Furthermore, as the damages suffered by each individual  
14 member of the class may be relatively small, the expenses and burden of individual  
15 litigation would make it difficult or impossible for individual members of the class to  
16 redress the wrongs done to them, while an important public interest will be served by  
17 addressing the matter as a class action. The cost to the court system of adjudication of  
18 such individualized litigation would be substantial. Individualized litigation would also  
19 present the potential for inconsistent or contradictory judgments. Finally, the alternative  
20 of filing a claim with the California Labor Commissioner is not superior, given the lack  
21 of discovery in such proceedings, the fact that there are fewer available remedies, and  
22 the losing party has the right to a trial de novo in the Superior Court.

### 23 **FACTUAL AND LEGAL ALLEGATIONS**

24 12. During the Class Period, PLAINTIFF, and each of the Class Members, were  
25 employed by DEFENDANTS in the State of California as non-exempt, employees. During the  
26 PAGA Period (defined below), PLAINTIFF and the Aggrieved Employees were employed by  
27 DEFENDANTS in the State of California as non-exempt, employees. At all times referenced herein,  
28 DEFENDANTS exercised control over PLAINTIFF, and Class Members and Aggrieved Employees

1 and suffered and/or permitted them to work.

2 13. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.  
3 PLAINTIFF worked for DEFENDANTS as a custodian and cook and/or other similar title(s) from  
4 in or around March 2020 through in or around early September 2021, when DEFENDANTS  
5 terminated PLAINTIFF's employment. PLAINTIFF worked for DEFENDANTS out of  
6 DEFENDANTS' campus/facility located on Coral Street, in Santa Cruz, California.

7 14. PLAINTIFF typically worked shifts lasting at least eight (8) hours per day, at least  
8 five (5) days per week. DEFENDANTS compensated PLAINTIFF with an hourly rate for time  
9 counted by DEFENDANTS as hours worked.

10 15. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate  
11 PLAINTIFF and other Class Members and Aggrieved Employees for all hours worked by virtue of  
12 DEFENDANTS' automatic deduction and time rounding policies, payment according to scheduled  
13 hours worked instead of actual time worked, mandated pre-shift/post-shift/ and/or other off-the  
14 clock work policies and/or practices and failure to relieve employees of all duties/employer control  
15 during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

16 16. As explained below, PLAINTIFF and other Class Members and Aggrieved  
17 Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted first and  
18 second meal periods. Based on information and belief, despite failing to provide lawful meal  
19 periods, DEFENDANTS implemented a policy and/or practice of automatically deducting at least  
20 thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that  
21 PLAINTIFF and other Class Members and Aggrieved Employees were working through part of all  
22 of these meal periods, thereby depriving PLAINTIFF and other Class Members and Aggrieved  
23 Employees of all earned minimum and overtime wages.

24 17. Based on further information and belief, DEFENDANTS rounded the start and end  
25 times of employee meal periods and shift start and end times resulting in PLAINTIFF and other  
26 Class Members and Aggrieved Employees not being paid for all time worked.

27 18. Based on information and belief, Class Members and Aggrieved Employees were  
28 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to

1 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies  
2 and/or practices. For example, prior to clocking in for their shifts each day, PLAINTIFF and other  
3 Class Members and Aggrieved Employees were required to stand in long lines with other employees  
4 and/or residents/community members to undergo a security check/ security clearance procedures as  
5 well as undergo a COVID-related temperature check, but this time spent under employer control  
6 undergoing DEFENDANTS' mandated COVID-temperature screening and/or other security  
7 screenings was not recorded and not compensated, resulting in at least five (5) minutes of pre-shift  
8 off-the-clock work each work day and unpaid minimum and overtime wages to PLAINTIFF and  
9 other Class Members and Aggrieved Employees.

10         19. Based on information and belief, DEFENDANTS required PLAINTIFF and other  
11 Class Members and Aggrieved Employees to perform other pre-shift and/or post-shift off-the-clock  
12 work that was neither recorded nor compensated. For example, when working as a cook,  
13 PLAINTIFF was often required to clock out for the end of his shift but to continue cleaning the  
14 kitchen, washing dishes, and /or completing other work tasks. At times, DEFENDANTS required  
15 PLAINTIFF to respond to work-related calls and/or messages on his personal cell phone before  
16 and/or after and/or otherwise outside of his scheduled shift times without compensating PLAINTIFF  
17 for this work time. Based on information and belief, other Class Members and Aggrieved  
18 Employees were also required to respond to work-related communications and/or complete other  
19 work tasks outside of their scheduled shift times, which said time was not recorded nor compensated,  
20 resulting in the underpayment of minimum wages owed to Class Members and Aggrieved  
21 Employees.

22         20. Based on information and belief, DEFENDANTS did not compensate Class  
23 Members and Aggrieved Employees for time spent donning and doffing personal protective  
24 equipment and/or uniforms (e.g., rubber gloves and/or face masks) during meal periods, rest periods,  
25 before the start of a scheduled shift, and after completing a scheduled shift.

26         21. Based on information and belief, DEFENDANTS failed to pay Class Members and  
27 Aggrieved Employees for time they were required to spend completing orientation, policy  
28 questionnaires, and/or time spent completing the onboarding process including but not limited to

1 reviewing various documents and policies provided by DEFENDANTS. Based on information and  
2 belief, this work time was completed off-the-clock and was not compensated.

3         22.       Additionally, PLAINTIFF and other Class Members and Aggrieved Employees were  
4 required to perform other off-the-clock work for which they were not compensated. For example,  
5 based on information and belief, DEFENDANTS' electronic employee time-keeping system/app  
6 regularly malfunctioned such that Class Members and Aggrieved Employees were frequently  
7 required to either reinitiate the system/app prior to being able to clock in and/or were unable to clock  
8 in at all for the start of their shifts and/or clock back in from meal periods, resulting in consistent  
9 off-the-clock work and the underpayment of minimum and overtime wages owed to Class Members  
10 and Aggrieved Employees. Based on information and belief, Class Members and Aggrieved  
11 Employees experienced the same issues when clocking out for shifts and/or back in for meal periods.  
12 This time spent under DEFENDANTS' control was not recorded and not compensated and resulted  
13 in unpaid minimum wages.

14         23.       Based on further information and belief, DEFENDANTS required/requires  
15 PLAINTIFF and other Class Members and Aggrieved Employees to undergo Covid testing outside  
16 of their scheduled shift times without compensating PLAINTIFF and other Class Members and  
17 Aggrieved Employees for the travel time to/from the testing sites, time spent waiting for the tests to  
18 be performed and/or time spent undergoing testing/fulfilling DEFENDANTS' testing requirements,  
19 resulting in significant off-the-clock work and unpaid minimum and overtime wages.

20         24.       Based on further information and belief, DEFENDANTS implemented a time-  
21 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and  
22 Aggrieved Employees of compensable time because the time-rounding system implemented by  
23 DEFENDANTS would almost always, if not always, result in understating actual compensable work  
24 time. DEFENDANTS' failure to pay for all time worked by virtue of its time-rounding practices  
25 resulted in the underpayment of minimum wages owed to PLAINTIFF and Class Members and  
26 Aggrieved Employees as well as unpaid overtime wages for those Class Members and Aggrieved  
27 Employees who worked more than eight (8) hours in a day and/or more than forty (40) hours in a  
28 week.

1           25.     Based on information and belief, DEFENDANTS failed and continues to fail to pay  
2 Class Members and Aggrieved Employees premium wage rate for all hours worked beyond eight  
3 (8) hours in a day or beyond forty (40) hours in a week.

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

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

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

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

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

2       30.     PLAINTIFF and other Class Members and Aggrieved Employees were consistently  
3 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take  
4 late meal periods, interrupted meal periods and/or work through part or all their meal periods due to  
5 the nature and constraints of their job duties, lack of relief workers available, and/or commentary  
6 from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks  
7 completely. For example, when working as custodian, PLAINTIFF estimates his meal periods were  
8 interrupted, cut short and/or or skipped completely at least two out of every five shifts he worked  
9 due to lack of coverage/lack of relief workers available and/or the need to attend to maintenance  
10 situations requiring immediate attention (e.g., feces removal in the common areas and/or other  
11 emergency maintenance situations) and/or complete other work tasks. When PLAINTIFF worked  
12 as a cook, PLAINTIFF typically worked at least the first five hours of his shift alone until another  
13 worker showed up to assist such that there was nobody to relieve PLAINTIFF so that he could take  
14 a timely, off-duty, thirty-minute meal period. During these shifts, there was simply not enough  
15 coverage for PLAINTIFF to be able to take his meal periods due to how busy the kitchen work was.  
16 When working as a cook, PLAINTIFF estimates his meal periods were late, interrupted, cut short  
17 and/or worked through completely approximately five shifts per week due to the nature of his job,  
18 his workload, and/or lack of coverage/relief kitchen workers available. On information and belief,  
19 other Class Members and Aggrieved Employees were also unable to take timely thirty-minute meal  
20 periods due to the nature of their jobs, workload, and/or lack of relief workers.

21       31.     Based on information and belief, other Class Members and Aggrieved Employees  
22 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had  
23 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise  
24 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job  
25 duties, and/or the need to meet DEFENDANTS' goals and expectations. Based on information and  
26 belief, PLAINTIFF and other Class Members and Aggrieved Employees were instructed by their  
27 supervisors to clock out for meal periods but to continue working during the purported meal periods  
28 due to understaffing, lack of coverage, and/or lack of relief workers. For example, when working as

1 a cook, PLAINTIFF was instructed to clock out for a thirty-minute meal period each day, however,  
2 PLAINTIFF was usually required to prepare and/or serve food, perform cleaning duties, and/or  
3 complete other work tasks while off the clock during what should have been off-duty meal periods.

4 32. DEFENDANTS implemented policies and practices that failed to relieve  
5 PLAINTIFF and other Class Members and Aggrieved Employees of all duties and DEFENDANTS'  
6 control during unpaid meal breaks.

7 33. Despite failing to provide lawful meal periods, DEFENDANTS implemented a  
8 policy and/or practice of automatically deducting at least thirty minutes per shift for these  
9 missed/unlawful meal periods, despite having actual and/or constructive knowledge that  
10 PLAINTIFF and other Class Members and Aggrieved Employees did not receive compliant meal  
11 periods.

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

17 35. Based on information and belief, DEFENDANTS failed to provide Class Members  
18 and Aggrieved Employees with duty-free, uninterrupted, thirty-minute, second meal periods before  
19 the end of the tenth hour of work when working shifts lasting more than ten and/or twelve hours.  
20 Based on information and belief, Class Members and Aggrieved Employees were only provided  
21 with a single meal period per shift, regardless of the number of hours worked, and as explained  
22 above, that single meal period was often non-compliant. For example, at times, PLAINTIFF worked  
23 shifts lasting more than ten hours but was not provided with any second meal period, and his first  
24 meal period was often interrupted, late and/or worked through completely. Based on information  
25 and belief, DEFENDANTS' wage statements for PLAINTIFF do not show the payment of a single  
26 meal period premium because DEFENDANTS did not pay PLAINTIFF any meal period  
27 premium(s) despite consistently denying PLAINTIFF his owed meal periods.

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

1 knowledge that DEFENDANTS' policies and practices resulted in the denial of timely,  
2 uninterrupted, off-duty meal periods owed to PLAINTIFF and other Class Members and Aggrieved  
3 Employees, in violation of California's meal period laws.

4 37. DEFENDANTS also failed to keep accurate records of the start and end times of  
5 PLAINTIFF's and Class Members' and Aggrieved Employees' meal period start and end times.  
6 Based on further information and belief, DEFENDANTS illegally rounded the start and end times  
7 of meal periods resulting in Class Members and Aggrieved Employees not being paid for all time  
8 worked as well as late and/or shortened meal periods. See *Donohue v. AMN Services, LLC* (2021)  
9 11 Cal.5th 58.

10 38. Based on further information and belief, DEFENDANTS did not have a compliant  
11 written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice.  
12 Liability for the aggrieved employees can be established by evidence that an employer adopted a  
13 uniform corporate break policy that failed to give full effect to California law and the applicable  
14 Wage Order requirements. See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.

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

19 40. Upon information and belief, DEFENDANTS failed to pay PLAINTIFF and other  
20 Class Members and Aggrieved Employees, an additional hour of wages at their respective regular  
21 rates of compensation for each workday a proper meal period was not provided. DEFENDANTS  
22 either failed to pay a meal period premium at all for each workday a proper meal period was not  
23 provided and/or failed to pay the proper meal period premium for failure to incorporate all non-  
24 discretionary remuneration, including but not limited to, non-discretionary bonuses/incentive pay,  
25 shift differential pay and/or other non-discretionary compensation into the regular rate or  
26 compensation for purposes of calculating the owed meal period premium.

27 41. **Rest Periods Violations.** DEFENDANTS did not authorize or permit PLAINTIFF  
28 and other Class Members and Aggrieved Employees to take legally compliant rest periods at a rate

1 of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in  
2 the middle of the work period, as required by law. PLAINTIFF and other Class Members and  
3 Aggrieved Employees were not adequately informed, authorized, instructed about, nor permitted an  
4 opportunity to take legally compliant rest breaks.

5 42. PLAINTIFF and other Class Members and Aggrieved Employees were consistently  
6 unable to take a net, ten-minute, off-duty rest period for every four (4) hours worked or major  
7 fraction thereof because of the nature and constraints of their job duties and/or commentary from  
8 supervisors pressuring them to take non-compliant rest breaks or skip rest breaks completely. Any  
9 purported rest periods would be interrupted, cut short, on duty, restricted to premises, and/or late  
10 due to the nature and constraints of the Class Members' and Aggrieved Employees' job duties,  
11 understaffing, and/or commentary from supervisors pressuring them to skip rest breaks completely  
12 and/or take non-compliant rest breaks.

13 43. PLAINTIFF and other Class Members and Aggrieved Employees were pressured to  
14 complete their work duties according to a designated schedule such that rest breaks were only taken  
15 once jobs were completed/as time permitted. For example, PLAINTIFF and other Class Members  
16 and Aggrieved Employees were often pressured to cut their rest breaks short and/or work through  
17 them completely due to understaffing/lack of relief workers and/or the need to complete work tasks.

18 44. Based on information and belief, DEFENDANTS implemented policies and/or  
19 practices that failed to relieve Class Members and Aggrieved Employees of all duties and  
20 DEFENDANTS' control during rest breaks. For example, PLAINTIFF and other Class Members  
21 and Aggrieved Employees were required to remain onsite/tethered to their worksites during any rest  
22 periods and thus remained under DEFENDANTS control during purportedly off-duty rest periods.  
23 As such, DEFENDANTS failed to provide PLAINTIFF and other Class Members and Aggrieved  
24 Employees with net, ten-minute, uninterrupted, off-duty rest periods in compliance with California  
25 law.

26 45. Based on information and belief, DEFENDANTS did not have a lawful policy,  
27 instruction, or practice as to the taking, length, timing, or duty-free nature of rest periods. Based on  
28 information and belief, DEFENDANTS did not have a have a compliant written rest period policy,

1 nor did DEFENDANTS have any sort of compliant rest period policy in practice. For example,  
2 based on information and belief, DEFENDANTS failed to authorize and permit rest periods that  
3 were a “net” ten minutes in a suitable rest area; instead, to the extent rest periods were provided,  
4 DEFENDANTS limited PLAINTIFF and other Class Members and Aggrieved Employees to only  
5 ten-minute rest periods, requiring them to be back at their workstations within ten minutes of  
6 leaving, in violation of California rest period law.

7       46.     Moreover, based on information and belief, DEFENDANTS failed to provide any  
8 form of a third rest period on shifts lasting longer than ten hours. For example, when PLAINTIFF  
9 worked shifts exceeding ten hours, PLAINTIFF was not provided with any third rest period.

10       47.     Despite not providing PLAINTIFF and other Class Members and Aggrieved  
11 Employees with all owed legally compliant rest periods, DEFENDANTS failed to pay PLAINTIFF  
12 and other Class Members and Aggrieved Employees, an additional hour of wages at their respective  
13 regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either  
14 failed to pay a rest period premium at all for each workday a proper rest period was not provided  
15 and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary  
16 remuneration, including but not limited to, non-discretionary bonuses/incentive pay, shift  
17 differential pay and/or other non-discretionary compensation into the regular rate of compensation  
18 for purposes of calculating the owed rest period premium.

19       48.     **Inaccurate Wage Statements.** DEFENDANTS failed to provide PLAINTIFF and  
20 the Class Members and Aggrieved Employees with accurate wage statements that complied with  
21 Labor Code section 226. DEFENDANTS provided wage statements that failed to indicate the total  
22 wages earned (including meal and rest period premiums), and total hours worked by PLAINTIFF  
23 and other Class Members and Aggrieved Employees (by virtue of the payment according to  
24 scheduled hours rather than actual hours worked, automatic deduction for meal periods, time-  
25 rounding policies and practices and other off-the-clock work policies and practices, all explained in  
26 greater detail above). Accordingly, DEFENDANTS violated Labor Code section 226 by providing  
27 wage statements that were inaccurate and failed to include all of the statutorily required information,  
28 including but not limited to, total hours worked.

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

9           50.     Separately, based on information and belief, DEFENDANTS violated Labor Code  
10 section 226 because the wage statements issued by DEFENDANTS failed to list the correct name  
11 and/or address of the legal entity that is the employer. For example, wage statements issued by  
12 DEFENDANTS to PLAINTIFF list “Housing Matters” as the legal name of the employer. Other  
13 wage statements issued by DEFENDANTS to PLAINTIFF list “Homeless Services Center” as the  
14 legal name of the employer. Documents in PLAINTIFF’s personnel file, including but not limited  
15 to, job performance review(s) and/or policy document(s) identify “Homeless Services Center” as  
16 the employer. Still, other policy document(s) and/or job performance review(s) in PLAINTIFF’s  
17 personnel file, as well as various letterheads contained in PLAINTIFF’s personnel file all identify  
18 the following entity as the employer: “Housing Matters”. Based on information and belief, Homeless  
19 Services Center changed its name to Housing Matters in or around July 2019. Based on information  
20 and belief, DEFENDANTS issued wage statements that identified Homeless Services Center as the  
21 employing entity even after DEFENDANTS changed their name to Housing Matters, thereby  
22 issuing wage statements that were not accurate and did not include all of the statutorily required  
23 information, including but not limited to, the name and address of the legal entity that is the  
24 employer. As a result, PLAINTIFF and other Class Members and Aggrieved Employees have  
25 suffered injury as they could not easily determine whether they received all wages owed to them  
26 and whether they were paid for all hours worked. Moreover, as a result of DEFENDANTS’ failure  
27 to list the correct legal entity that is the employer, PLAINTIFF and the Class Members and  
28 Aggrieved Employees have suffered injury as there was confusion as to which entity to contact

1 regarding any question(s) they had about wages paid and unpaid.

2       51.     **Unreimbursed Business Expenses.** DEFENDANTS required PLAINTIFF and  
3 Class Members and Aggrieved Employees to incur business expenses as a direct consequence of the  
4 performance of their job duties without providing reimbursement, in violation of Labor Code section  
5 2802.

6       52.     Based on information and belief, PLAINTIFF and Class Members and Aggrieved  
7 Employees were improperly required to provide and maintain work tools that are supposed to be the  
8 responsibility of the employer.

9       53.     At all relevant times hereto, DEFENDANTS shifted its costs of doing business onto  
10 PLAINTIFF and other Class Members and Aggrieved Employees by requiring them to pay for its  
11 business expenses, including but not limited to, uniforms and/or the use of Class Members and  
12 Aggrieved Employees' personal mobile phone and data usage for work related purposes including  
13 but not limited to receiving and responding to work related messages and/or phone calls. For  
14 example, PLAINTIFF was required to download and use an employee time-keeping application on  
15 his personal cell phones/mobile device and received work-related calls and/or messages from his  
16 supervisor to his personal cell phone/mobile device without receiving any reimbursement from  
17 DEFENDANTS for the costs incurred as a result of being required to use his personal cell  
18 phone/mobile device for DEFENDANTS' business purposes. Based on information and belief,  
19 Class Members and Aggrieved Employees were not reimbursed for the cost of using their personal  
20 phones/mobile devices for work related purposes. Based on further information and belief, Class  
21 Members and Aggrieved Employees were also required to incur costs associated with the purchase  
22 and/or maintenance of work uniforms/work clothing, protective equipment and/or safety gear. For  
23 example, at times PLAINTIFF had to purchase his own face masks that DEFENDANTS required  
24 for work.

25       54.     Based on information and belief, DEFENDANTS did not reimburse Class Members  
26 and Aggrieved Employees for the cost of undergoing employer-mandated testing (e.g., Covid  
27 testing), including but not limited to purchasing the test, and/or the cost of traveling and/or using a  
28 personal vehicle to and from a testing site.

1           55. As a pattern and practice, DEFENDANTS regularly failed to reimburse and  
2 indemnify PLAINTIFF and other Class Members and Aggrieved Employees for business expenses.  
3 Pursuant to California Labor Code section 2802, PLAINTIFF and other Class Members and  
4 Aggrieved Employees were entitled to be reimbursed for all reasonable expenses associated with  
5 carrying out orders by DEFENDANTS and/or carrying out the duties assigned by DEFENDANTS.

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

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

15          58. Upon separation of employment, Class Members' and Aggrieved Employees' final  
16 paychecks were not timely provided and/or were not timely provided with all owed vacation pay  
17 and/or paid time off. Moreover, Class Members' and Aggrieved Employees' final paychecks, once  
18 provided, did not include all wages owed as they were devoid of, including but not limited to, all  
19 owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave  
20 and/or paid time off wages at the properly accrued rates. For example, in or around early September  
21 2021, DEFENDANTS terminated PLAINTIFF's employment but did not provide PLAINTIFF with  
22 any final paycheck until at least one or two days following PLAINTIFF's termination, and  
23 PLAINTIFF's final paycheck once provided did not include all wages owed as it was devoid of,  
24 including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation  
25 pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

26          59. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS  
27 engaged in these same herein described unlawful practices with regard to all of the Class Members  
28 and Aggrieved Employees and that DEFENDANTS applied these same herein described unlawful

1 practices to all of its employees that it applied to PLAINTIFF.

2 **FIRST CAUSE OF ACTION**

3 **Recovery of Unpaid Minimum Wages and Liquidated Damages**  
4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

5 60. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 61. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage  
7 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up  
8 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.  
9 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll  
10 period is unlawful.

11 62. DEFENDANTS violated California’s minimum wage laws by failing to compensate  
12 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,  
13 DEFENDANTS’ auto-deduction policy and practice for meal periods, paying for scheduled hours  
14 instead of actual hours worked, off the-clock work policies and practices, failure to relieve  
15 PLAINTIFF and Class Members of all duties and employer control and/or otherwise unlawful meal  
16 period practices, and rounded time entries (described above).

17 63. DEFENDANTS had and continue to have a continuous policy of failing to pay  
18 PLAINTIFF and Class Members for all hours worked.

19 64. Based on information and belief, DEFENDANTS had and continue to have a  
20 continuous policy of rounding PLAINTIFF and Class Members time punches, including the start  
21 and end of shift times, and meal period time punches and/or automatically deducting at least thirty  
22 minutes per shift for meal periods that were not actually afforded, resulting in unpaid minimum  
23 wages.

24 65. Based on information and belief, DEFENDANTS had and continue to have a  
25 continuous policy of paying PLAINTIFF and Class Members for scheduled hours, rather than actual  
26 hours worked.

27 66. Based on information and belief, DEFENDANTS had and continue to have a  
28 continuous policy of requiring PLAINTIFF and the Class Members to perform work prior to  
clocking in for their shifts and/or after clocking out for their shifts and/or outside of their scheduled

1 shift times and during uncompensated meal periods, resulting in unpaid minimum wages.

2 67. Based on information and belief, DEFENDANTS had actual or constructive  
3 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for  
4 meal periods, failing to relieve employees of all duties and employer control during unpaid meal  
5 periods, policy and practice of payment according to scheduled time rather than actual work time as  
6 well as other off-the-clock work described above, resulted in the underpayment of minimum wages  
7 owed to PLAINTIFF and other Class Members.

8 68. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class  
9 Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon,  
10 plus attorney's fees and costs, in an amount to be proved at trial.

11 **SECOND CAUSE OF ACTION**

12 **Recovery of Unpaid Overtime Wages**  
13 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

15 70. Employees in California must be paid overtime, equal to one and one-half times the  
16 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including  
17 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of  
18 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in  
19 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh  
20 consecutive day of work in a workweek, unless they are exempt.

21 71. PLAINTIFF and the Class Members worked overtime hours for which they were not  
22 compensated by DEFENDANTS by virtue of DEFENDANTS' automatic deduction and time  
23 rounding policies and practices for meal periods, payment according to scheduled hours worked  
24 rather than actual time worked/mandated pre-shift and/or post-shift off-the clock work, as well as  
25 other off-the-clock work and/or unpaid work completed during meal periods, and other off-the-clock  
work (all described above).

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

1 discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting  
2 in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and Class  
3 Members.

4 73. DEFENDANTS' conduct described above is in violation of California Labor Code  
5 sections 510 and 1194 and all applicable Wage Orders.

6 74. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime  
7 wages, plus attorney's fees and costs, in an amount to be proved.

8 **THIRD CAUSE OF ACTION**

9 **Failure to Provide Meal Periods or Compensation in Lieu Thereof  
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

10 75. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

11 76. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders, employers  
12 must employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works  
13 more than five (5) hours in a workday, and it must be provided within the first five (5) hours the  
14 employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and  
15 (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4<sup>th</sup> 1004. Employers must also  
16 provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an  
17 employee works more than (10) hours in a workday, and it must be provided before the end of the  
18 10<sup>th</sup> hour of work. *Ibid.*

19 77. Meal periods can be waived, but only under the following circumstances: (1) if an  
20 employee's total work period in a day is over five (5) hours but no more than six (6) hours, the  
21 required meal period may be waived by mutual consent of the employer and employee, and (2) if  
22 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,  
23 the required second meal period may be waived by mutual consent of the employer and employee,  
24 but only if the first meal period was not waived. Employers covered by the Wage Orders have an  
25 obligation to both (1) relieve their employees for at least one meal period for shifts over five hours  
26 (see above), and (2) to record having done so. If the employer fails to properly record a valid meal  
27 period, it is presumed no meal period was provided.

28 78. Employers must pay employees an additional hour of wages at the employees'

1 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted  
2 meal period, first meal period provided after five (5) hours, second meal period provided after 10  
3 hours). Lab. Code § 226.7.

4 79. As explained above, PLAINTIFF and the Class Members were consistently unable  
5 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being  
6 forced to take late meal periods, interrupted meal periods and/or work through part or all of their  
7 meal periods due to the nature and constraints of their job duties, and/or commentary from  
8 DEFENDANTS pressuring them to take non-compliant meal periods or skip meal periods  
9 completely.

10 80. Based on information and belief, DEFENDANTS had and continue to have a  
11 continuous policy of rounding the start and end times of employees' meal periods and/or  
12 automatically deducting thirty minutes per shift despite having actual and/or constructive  
13 knowledge that PLAINTIFF and Class Members did not receive compliant meal periods.

14 81. Moreover, Class Members did not receive a timely, uninterrupted second meal period  
15 when working shifts over ten (10) hours in a workday.

16 82. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal  
17 periods in violation of California law or failed to pay the proper meal period premium for failure to  
18 incorporate all non-discretionary remuneration including but not limited to non-discretionary  
19 bonuses/incentive pay and/or other non-discretionary compensation into the regular rate or  
20 compensation for purposes of calculating the owed meal period premium.

21 83. DEFENDANTS failed to provide PLAINTIFF and the Class Members with all  
22 required meal periods, or with proper compensation in lieu thereof. PLAINTIFF is informed and  
23 believes and thereon alleges that DEFENDANTS had actual or constructive knowledge that their  
24 time-rounding and auto-deduction policies and practices, and off-the-clock work policies and  
25 practices, and other policies and practices that failed to relieve PLAINTIFF and other Class  
26 Members of all duties and employer control during purported meal periods resulted in the denial of  
27 compliant meal periods in violation of California's meal period laws.

28 84. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members

1 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day  
2 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,  
3 all in an amount to be proved at trial.

#### 4 **FOURTH CAUSE OF ACTION**

##### 5 **Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

6 85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

20 87. PLAINTIFF and the Class Members did not receive compliant, timely 10-minute rest  
21 periods for every four (4) hours worked or major fraction thereof. Any purported rest periods were  
22 interrupted, cut short, on duty, and/or late. PLAINTIFF and the Class Members were pressured to  
23 complete their work such that rest breaks were only taken once tasks were completed/as time  
24 permitted.

25 88. Moreover, based on information and belief, DEFENDANTS failed to pay a rest  
26 period premium to PLAINTIFF and other Class Members for each workday in which there was a  
27 missed or otherwise unlawful rest period. Based on further information and belief, when a rest  
28 premium was paid, DEFENDANTS failed to include non-discretionary compensation, including but

1 not limited to, non-discretionary bonuses/incentive pay, shift differential pay and/or other non-  
2 discretionary compensation into the regular rate of compensation for purposes of determining the  
3 owed rest period premium.

4 89. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one  
5 hour of additional pay at the regular rate of compensation for each workday that a required rest  
6 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage  
7 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at  
8 trial.

9 **FIFTH CAUSE OF ACTION**  
10 **Failure to Furnish Accurate Itemized Wage Statements**  
11 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

13 91. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class  
14 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized  
15 wage statement accurately stating the following:

16 (1) gross wages earned, (2) total hours worked by the employee,  
17 except for any employee whose compensation is solely based on a  
18 salary and who is exempt from payment of overtime under  
19 subdivision (a) of Section 515 or any applicable order of the Industrial  
20 Welfare Commission, (3) the number of piece-rate units earned and  
21 any applicable piece rate if the employee is paid on a piece-rate basis,  
22 (4) all deductions, provided that all deductions made on written orders  
23 of the employee may be aggregated and shown as one item, (5) net  
24 wages earned, (6) the inclusive dates of the period for which the  
25 employee is paid, (7) the name of the employee and his or her social  
26 security number, except that by January 1, 2008, only the last four  
27 digits of his or her social security number or an employee  
28 identification number other than a social security number may be  
shown on the itemized statement, (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.

92. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with  
meal and rest periods that complied with Labor Code section 226.7, the wage statements  
DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to  
correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the  
total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages

1 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect  
2 during the pay period and the corresponding number of hours worked at each hourly rate by the  
3 employee, in violation of Labor Code section 226(a)(9).

4 93. Moreover, due to violations detailed above, including but not limited to,  
5 DEFENDANTS' failure to pay minimum and overtime wages for all hours worked, failure to pay  
6 all sick leave wages at the proper rates, and failure to provide meal and rest break premiums,  
7 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish  
8 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the earned  
9 gross and net wages earned and the correct applicable rates of pay for all hours worked. As described  
10 above, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation  
11 earned during the pay period into the overtime pay rate calculation, and as such, failed to display  
12 the proper overtime rate(s) for each hour of overtime worked by Class Members.

13 94. Moreover, wage statements issued by DEFENDANTS failed to indicate the earned  
14 gross and net wages earned during the pay period, the correct applicable rates of pay for all hours  
15 worked, and the "total hours worked" by PLAINTIFF and Class Members (by virtue of the  
16 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer  
17 control during unpaid meal periods, payment according to scheduled hours worked rather than actual  
18 hours worked, mandated pre-shift and/or post-shift off-the-clock work and other off-the-clock work  
19 policies and practices, all described in greater detail *supra*), which results in a violation of Labor  
20 Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference  
21 of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th  
22 1308, 1337).

23 95. DEFENDANTS' failure to accurately list all hours worked on all wage statements  
24 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class  
25 Members over whether they received all wages owed to them.

26 96. As a result, PLAINTIFF and other Class Members have suffered injury as they could  
27 not easily determine whether they received all wages owed to them and whether they were paid for  
28 all hours worked.

1           97. Separately, and independent of the above allegations, based on information and  
2 belief, DEFENDANTS issued wage statements to PLAINTIFF and other Class Members that  
3 further violate Labor Code section 226(a), by failing to list the correct name and/or address of the  
4 legal entity that is the employer.

5           98. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and the  
6 Class Members with accurate, itemized wage statements.

7           99. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class  
8 Members have suffered injury. The absence of accurate information on their wage statements has  
9 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and  
10 mathematical computations to determine the amount of wages owed, and will cause difficulty and  
11 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the  
12 submission of inaccurate information about wages and amounts deducted from wages to state and  
13 federal government agencies. As a result, PLAINTIFF and the Class Members are required to  
14 participate in this lawsuit and create more difficulty and expense for PLAINTIFF and the Class  
15 Members from having to reconstruct time and pay records than if DEFENDANT had complied with  
16 its legal obligations.

17           100. Pursuant to California Labor Code section 226(e), PLAINTIFF and the Class  
18 Members are entitled to recover fifty dollars per employee for the initial pay period in which a  
19 Section 226 violation occurred and one hundred dollars per employee per violation for each  
20 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

21           101. Pursuant to California Labor Code § 226(h), PLAINTIFF and the Class Members are  
22 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with  
23 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to  
24 provide currently employed Class Members with inaccurate wage statements in violation of  
25 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy  
26 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful  
27 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance  
28 with California Labor Code § 226(a).

1           102. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and the Class  
2 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable  
3 attorneys' fees, and costs of suit.

4                                   **SIXTH CAUSE OF ACTION**

5                                   **Failure to Timely Pay All Wages Due Upon Separation of Employment**  
6                                   **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7           103. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

8           104. California Labor Code section 201(a) provides, in relevant part, that "[i]f an  
9 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and  
payable immediately."

10          105. California Labor Code section 202(a) provides, in relevant part, that "[i]f an  
11 employee not having a written contract for a definite period quits his or her employment, his or her  
12 wages shall become due and payable not later than 72 hours thereafter, unless the employee has  
13 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled  
14 to his or her wages at the time of quitting."

15          106. Based in information and belief, DEFENDANTS fail to timely pay final wages to  
16 Class Members upon separation of employment in violation of Labor Code section 201-202 and/or  
17 fail to timely provide final wages with all owed vacation pay and/or paid time off. Based on  
18 information and belief, DEFENDANTS untimely provide final wages to Class Members without  
19 regard to the timing requirements of Labor Code sections 201-202.

20          107. Moreover, final paychecks once provided to Class Members do not include all wages  
21 owed as they are devoid of, including but not limited to, all owed minimum wages, overtime wages,  
22 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly  
23 accrued rates.

24          108. Under Labor Code section 203, PLAINTIFF and the Class Members who are no  
25 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'  
26 pay, plus attorney's fees and costs, in an amount to be proved at trial.

**SEVENTH CAUSE OF ACTION**  
**Failure to Reimburse Business Expenses**  
**(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

109. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

110. 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 s. 2802 and all applicable Wage Orders section 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.”

111. Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

112. As described above, PLAINTIFF and the Class Members were improperly required to pay for business expenses that are legally the responsibility of the employer, including but not limited to costs associated with using a personal cell phone/data plan usage and costs associated with the purchase and/or maintenance of work uniforms/work clothing, protective equipment and/or safety gear. On further information and belief,, DEFENDANTS did not reimburse Class Members for the cost of undergoing employer-mandated testing (e.g., Covid testing), including but not limited to purchasing the test, and/or the cost of traveling and/or using a personal vehicle to and from a

1 testing site.

2 113. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full  
3 reimbursement for all reasonable expenses associated with carrying out their duties required that  
4 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in  
5 violation of Labor Code section 2802.

6 114. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class  
7 Members have suffered injury in that they were not completely reimbursed as mandated by  
8 California law.

9 115. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members  
10 re entitled to recover the full amount of reimbursable expenses due, in addition to reasonable  
11 attorneys' fees, and costs of suit.

#### 12 **EIGHTH CAUSE OF ACTION**

##### 13 **Unfair Competition**

##### 14 **(By PLAINTIFF and the Class Members Against All Defendants)**

15 116. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 117. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair  
17 competition within the meaning of California Business and Professions Code section 17200. This  
18 unfair conduct includes all unlawful conduct alleged herein, including but not limited to:  
19 DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and  
20 practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest or  
21 pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate  
22 itemized wage statements; DEFENDANTS' failure to provide paid sick leave/all paid time off  
23 provided in lieu thereof at the properly accrued rates due to, including but not limited to,  
24 DEFENDANTS' failure to base the accrued sick leave on the correct number of hours worked;  
25 DEFENDANTS' failure to reimburse business expenses; and DEFENDANTS' failure to timely pay  
26 all wages due during and upon separation of employment.

27 118. Due to DEFENDANTS' unfair and unlawful business practices in violation of the  
28 California Labor Code, DEFENDANTS have gained a competitive advantage over other  
comparable companies doing business in the State of California that comply with their obligations

1 to authorize or permit rest and meal periods or pay proper meal and rest period premiums in lieu  
2 thereof, to provide proper notice and properly accrue and pay sick time benefits, to provide complete  
3 and accurate itemized wage statements, to reimburse employees for all business expenses, to pay all  
4 owed minimum and overtime wages, and to pay all wages due during and upon separation of  
5 employment of their employees.

6 119. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF  
7 and the Class Members have suffered injury in fact and lost money or property, as described in more  
8 detail above. Pursuant to California Business and Professions Code section 17200, et seq.,  
9 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully  
10 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of its  
11 unlawful and unfair business practices.

12 120. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class  
13 Members, enjoining DEFENDANTS and any and all persons acting in concert with it from engaging  
14 in each of the unlawful practices and policies set forth herein.

15 121. PLAINTIFF also seeks an award of attorneys' fees pursuant to Code Civ. Proc.  
16 section 1021.5 and as permitted by law.

17 **NINTH CAUSE OF ACTION**  
18 **Violation of the Private Attorneys General Act of 2004**  
19 **(Against All Defendants)**

20 122. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

21 123. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,  
22 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of himself, the  
23 State of California and Aggrieved Employees, regarding violations of the California Labor Code as  
24 set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

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

28 124. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code

1 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations  
2 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,  
3 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved  
4 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.  
5 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved  
6 Employees, as he was jointly employed by DEFENDANTS and is thereby affected by one or more  
7 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th  
8 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by  
9 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

#### 10 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

11 125. On August 15, 2022, PLAINTIFF, through his counsel, gave written notice by online  
12 filing with the California Labor and Workforce Development Agency ("LWDA") informing the  
13 LWDA and Division of Occupational Safety and Health that DEFENDANTS failed to comply with  
14 California's labor laws with regard to the allegations alleged in this Complaint ("PAGA Notice").  
15 The PAGA Notice outlined PLAINTIFF's claims for violations of the California Labor Code and  
16 the applicable wage orders on behalf of himself, the State of California and other Aggrieved  
17 Employees. The LWDA assigned PLAINTIFF the following case number: LWDA-CM-901978-22.  
18 Attached hereto as **Exhibit 1** is a true and correct copy of PLAINTIFF's PAGA Notice, which was  
19 mailed to DEFENDANTS.

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

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

28 128. From one year prior to PLAINTIFF's filing of the required PAGA notice with the

1 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California  
2 Labor Code sections 201-203, 210, 216, 221-223, 226, 226.7, 233, 234, 245-248.5, 432, 432.5,  
3 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5,  
4 6400-6404, and 6406-6407.

5 129. As set forth above, DEFENDANTS have committed numerous violations of the  
6 California Labor Code due to including but not limited to their failure to pay all owed minimum  
7 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation  
8 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,  
9 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties  
10 are in addition to any other relief available under the Labor Code.

11 130. Additionally, DEFENDANTS have violated the following Labor Code sections and  
12 provisions of the applicable Wage Order as to PLAINTIFF and Aggrieved Employees.

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

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

25 133. DEFENDANTS’ failure to keep “accurate and complete” payroll records for  
26 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all  
27 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under  
28 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and

1 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay  
2 period during which the referenced statutes and Wage Order provisions were violated.<sup>3</sup>

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

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

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

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25 <sup>3</sup> Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor  
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the  
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil  
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes  
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each  
pay period during which the employee was underpaid") (emphasis added).

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

4 137. Based on information and belief, DEFENDANTS fail to produce or make available  
5 Aggrieved Employees’ personnel records and/or payroll records when requested pursuant to Labor  
6 Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject  
7 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

8 138. **Sick Leave Violations:** DEFENDANTS violated California's paid sick leave laws  
9 including, Labor Code sections 245-248.5; DEFENDANTS failed to provide proper sick leave to  
10 Aggrieved Employees, due to, including but not limited to, DEFENDANTS’ failure to account for  
11 the actual hours worked by virtue of DEFENDANTS’ failure to relieve Aggrieved Employees of all  
12 duties and employer control during any unpaid meal periods, mandated pre-shift/post-shift off-the-  
13 clock work, payment according to scheduled hours rather than actual time worked and time-  
14 rounding policies and practices, as described herein, and or DEFENDANT'S failure to incorporate  
15 all forms of non-discretionary remuneration, including but not limited to, non-discretionary  
16 bonuses/incentive pay and/or shift differential pay, and/or other non-discretionary compensation  
17 into the sick pay calculation. DEFENDANTS further failed to put the Aggrieved Employees on  
18 notice of their paid sick leave rights - or thereby putting their entitlement to sick leave in a Labor  
19 Code section 2810.5 notice. DEFENDANTS failed to maintain accurate records documenting the  
20 hours worked and paid sick days accrued and used by the Aggrieved Employees, in violation of  
21 Labor Code section 247.5. DEFENDANTS failed to provide notice of the accrued sick leave  
22 amount or balance left for the Aggrieved Employees by failing to provide Aggrieved Employees  
23 with a wage statement or separate writing showing the balance of accrued or available sick leave,  
24 or paid time off leave provided in lieu of sick leave, on their designated pay dates with the their  
25 payment of wages, as required under Labor Code section 246, and thus affected Aggrieved  
26 Employees' intelligent exercise of their paid sick leave. But for this failure, Aggrieved Employees  
27 who are no longer employed with DEFENDANTS would have used their paid sick leave at least  
28 prior to their respective separations, or on several occasions after receiving notice of the available

1 sick leave.

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

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

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

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

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

1 to be seated.

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

3 (A) All working employees shall be provided with suitable seats when the nature of the  
4 work reasonably permits the use of seats.

5 (B) When employees are not engaged in the active duties of their employment and the nature  
6 of the work requires standing, an adequate number of suitable seats shall be placed in  
7 reasonable proximity to the work area and employees shall be permitted to use such seats  
8 when it does not interfere with the performance of their duties.

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

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

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

21 148. DEFENDANTS' Aggrieved Employees worked in various positions, including but  
22 not limited to, custodians, maintenance workers, cooks, and/or other similar titles. The nature of  
23 PLAINTIFF's and other Aggrieved Employees' work reasonably permitted the use of seats.  
24 However, DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved  
25 Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor  
26 Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code  
27 sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision,  
28 for each Aggrieved Employee, results in a separate civil penalty.

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

6           **150.** Therefore, DEFENDANTS' violations with respect to, including but not limited to,  
7 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, seating,  
8 and unreimbursed business expenses result in separate violations of sections 1198 and 1199.

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

23           **152. Failure to Provide a Safe and Healthful Workplace:** Pursuant to California Labor  
24 Code sections 6400-6404 and 6406-6407 of the California Occupational Safety and Health Act ("Cal  
25 OSHA"), employers must maintain a safe and healthful place of employment.

26           **153.** Specifically, Labor Code section 6400, requires the following:

27           (a) Every employer shall furnish employment and a place of employment that is safe and  
28 healthful for the employees therein...

1           154. Labor Code section 6401 provides as follows:

2           Every employer shall furnish and use safety devices and safeguards, and shall adopt and use  
3 practices, means, methods, operations, and processes which are reasonably adequate to render such  
4 employment and place of employment safe and healthful. Every employer shall do every other thing  
5 reasonably necessary to protect the life, safety, and health of employees.

6           155. Labor Code section 6402 prohibits the following:

7 No employer shall require, or permit any employee to go or be in any employment or place of  
8 employment which is not safe and healthful.

9           156. Similarly, Labor Code section 6404 provides as follows:

10 No employer shall occupy or maintain any place of employment that is not safe and  
11 healthful.

12           157. In addition to the above, Labor Code section 6403 requires that employees provide  
13 safety devices to its employees. Labor Code section 6403 states:

14 No employer shall fail or neglect to do any of the following:

15 (a) To provide and use safety devices and safeguards reasonably adequate to render the  
16 employment and place of employment safe.

17 (b) To adopt and use methods and processes reasonably adequate to render the employment  
18 and place of employment safe.

19 (c) To do every other thing reasonably necessary to protect the life, safety, and health of  
20 employees.

21           158. Similarly, Labor Code section 6406(d) states the following:

22 No person shall do any of the following ... (d) Fail or neglect to do every other thing  
23 reasonably necessary to protect the life, safety, and health of employees.

24           159. Finally, Labor Code section 6407 provides:

25 Every employer and every employee shall comply with occupational safety and health  
26 standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and  
27 orders pursuant to this division which are applicable to his own actions and conduct.

28           160. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved

1 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. However, DEFENDANTS  
2 failed to provide a safe and healthful workplace due in part to its failure to provide personal  
3 protective equipment, including but not limited to, gloves and/or face masks, among other personal  
4 protective equipment. For example, as a custodian, PLAINTIFF had to handle and/or dispose of  
5 used needles/syringes found on the facility grounds/in the common areas. However,  
6 DEFENDANTS failed to provide PLAINTIFF with any and/or adequate protective or safety  
7 equipment when dealing with the disposal of needles and/or syringes and/or failed to have a policy  
8 in place for the proper disposal of needles and/or syringes. Moreover, DEFENDANTS failed to  
9 provide personal protective equipment required to maintain the health and safety of employees when  
10 dealing with feces and/or urination removal. For example, at times, PLAINTIFF was often required  
11 to remove feces from the common areas of DEFENDANTS' facility, yet DEFENDANTS failed to  
12 provide PLAINTIFF with any type of personal protective equipment or safety equipment and/or  
13 adequate personal protective equipment or safety equipment when dealing with the cleaning of feces  
14 and/or feces removal. Based on information and belief, DEFENDANTS further failed to provide  
15 adequate protective or safety equipment to protect PLAINTIFF and Aggrieved Employees from  
16 exposure to COVID-19 by including but not limited to, failing to provide any and/or adequate face  
17 masks, and/or hand sanitizers and/or disinfectant sprays.

18 161. As such, DEFENDANTS failed to comply with the occupational safety and health  
19 standards, failed to do everything reasonably necessary to protect the health and safety of  
20 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices  
21 necessary to maintain a safe and healthful workplace.

22 162. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor  
23 Code section 6400-6404, and 6406-6407 as to PLAINTIFF and other Aggrieved Employees and is  
24 subject to civil penalties.

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

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

165. Under the provisions of PAGA and the following Labor Code sections, 201-203, 210, 216, 221-223, 226, 226.7, 233, 234, 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, 6400-6404, and 6406-6407 and all relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA penalties under Labor Code section 2699(f) for any violation of a Labor Code section without a specified civil penalty. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all in an amount to be proved.

## **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and the Class Members and Aggrieved Employees:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed class representative;
3. For an order that counsel for PLAINTIFF be appointed class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, et seq. of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred;
12. For civil penalties according to proof, including PAGA penalties (75% payable to the

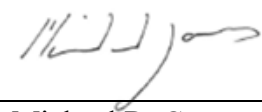
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LWDA and 25% payable to Aggrieved Employees and  
13. For such other and further relief that the Court deems just and proper.

Dated: October 20, 2022

**CROSNER LEGAL, PC**

By: \_\_\_\_\_



Michael R. Crosner, Esq.  
Zachary M. Crosner, Esq.  
Jamie K. Serb, Esq.  
Michael W. Jones, Esq.  
Attorneys for Plaintiff,  
JEFFREY HOXSIE

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Dated: October 20, 2022

11/11/20

Michael R. Crosner, Esq.  
Zachary M. Crosner, Esq.  
Jamie K. Serb, Esq.  
Michael W. Jones, Esq.  
Attorneys for Plaintiff,  
JEFFREY HOXSIE

# **EXHIBIT**

**1**



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

Kiara Bramasco, Esq.  
[kiara@crosnerlegal.com](mailto:kiara@crosnerlegal.com)  
direct: (323) 205-7495  
office: (310) 496-5818  
fax: (310) 510-6429

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August 15, 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](mailto:PAGAFilings@dir.ca.gov)

**VIA PAGA ONLINE FILING ONLY**

Notice to Division of Occupational  
Safety and Health Via PAGA Online  
Filing  
Attn: Division of Occupational Safety  
and Health (Cal OSHA)  
1515 Clay Street, St. 1901  
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL:**

Mary Lou Goeke  
Agent for Service of Process for:  
**Housing Matters**  
115 B Coral Street  
Santa Cruz, CA 95060

**Housing Matters**  
Attn: Human Resources/ Legal Department  
115B Coral St  
Santa Cruz, CA 95060

**Housing Matters**  
Attn: Human Resources / Legal  
Department  
115 Coral Street  
Santa Cruz, CA 95060

**Homeless Services Center**  
Attn: Human Resources / Legal  
Department  
115 Coral Street  
Santa Cruz, CA 95060

**NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM**

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To: California Labor and Workforce Development Agency; Cal OSHA; Housing  
Matters; and Homeless Services Center  
Date: August 15, 2022  
Subject: *Jeffrey Hoxsie v. Housing Matters, et. al.*

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## **Introduction**

This office represents COMPLAINANT, Jeffrey Hoxsie (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entity and individual managing agents of said entities: Housing Matters and Homeless Services Center (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 a non-profit organization that partners with individuals and families to create pathways out of homelessness and into permanent housing, providing food, shelter, medical services, among other services for the local homeless population. Based on information and belief, EMPLOYER's campus located on Coral St. in Santa Cruz, CA, has four emergency and transitional housing shelters for nearly 230 people, a medical clinic, and a 12-bed medical respite care facility.<sup>1</sup> Although EMPLOYER may operate a successful organization/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 custodian and cook and/or other similar title(s) from in or around

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<sup>1</sup> See <https://housingmatterssc.org/about/our-mission/>. Last visited August 12, 2022.

March 2020 through in or around early September 2021, when EMPLOYER terminated COMPLAINANT's employment. COMPLAINANT worked for EMPLOYER out of EMPLOYER's campus/facility located on Coral Street, in Santa Cruz, California. COMPLAINANT regularly worked at least eight (8) 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) failed and continues to fail to provide suitable seating; 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, 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 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.<sup>2</sup>

**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 intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

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

**Personnel Records**

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

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

Based on information and belief, EMPLOYER fails to 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, 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. 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.

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

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.4<sup>th</sup> 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 10<sup>th</sup> 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.4<sup>th</sup> 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.4<sup>th</sup> 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, when working as custodian, COMPLAINANT estimates his meal periods were interrupted, cut short and/or or skipped completely at least two out of every five shifts he worked due to lack of coverage/lack of relief workers available and/or the need to attend to maintenance situations requiring immediate attention (e.g., feces removal in the common areas and/or other emergency maintenance situations) and/or complete other work tasks. When COMPLAINANT worked as a cook, COMPLAINANT typically worked at least the first five hours of his shift alone until another worker showed up to assist such that there was nobody to relieve COMPLAINANT so that he could take a timely, off-duty, thirty-minute meal period. During these shifts, there was simply not enough coverage for COMPLAINANT to be able to take his meal periods due to how busy the kitchen work was. When working as a cook, COMPLAINANT estimates his meal periods were late, interrupted, cut short and/or worked through completely approximately five shifts per week due to the nature of his job, his workload, and/or lack of coverage/relief kitchen workers available. On information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also unable to take timely thirty-minute meal periods due to the nature of their jobs, workload, and/or lack of relief workers.

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, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working during the purported meal periods due to understaffing, lack of coverage, and/or lack of relief workers. For example, when working as a cook, COMPLAINANT was instructed to clock out for a thirty-minute meal period each day, however, COMPLAINANT was usually required to prepare and/or serve food, perform cleaning duties, and/or complete other work tasks while off the clock during what should have been off-duty meal periods.

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, when COMPLAINANT worked more than ten hours in a shift, COMPLAINANT was not provided with a second meal period.

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.<sup>3</sup> 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.4<sup>th</sup> 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.5<sup>th</sup> 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 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.

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<sup>3</sup> 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").

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 law. 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, based on information and belief, EMPLOYER failed to authorize and permit rest periods that were a “net” ten minutes in a suitable rest area; instead, to the extent rest periods were provided, EMPLOYER limited COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law.

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 shifts exceeding ten hours, COMPLAINANT was not provided with any 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. For example, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain onsite/tethered to their worksites during any rest periods and thus remained under EMPLOYER control during purportedly off-duty rest periods, in violation of California’s rest period laws.

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.<sup>4</sup>

**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 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.

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<sup>4</sup> 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”).

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, 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, prior to clocking in for their shifts each day, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to stand in long lines with other employees and/or residents/community members to undergo a security check/ security clearance procedures as well as undergo a COVID-related temperature check, but this time spent under employer control undergoing EMPLOYER's mandated COVID-temperature screening and/or other security screenings was not recorded and not compensated, resulting in at least five (5) minutes of pre-shift off-the-clock work each work day and unpaid minimum and overtime wages to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT EMPLOYEES to perform other pre-shift and/or post-shift off-the-clock work that was neither recorded nor compensated. For example, when working as a cook, COMPLAINANT was often required to clock out for the end of his shift but to continue cleaning the kitchen, washing dishes, and /or completing other work tasks. At times, EMPLOYER required COMPLAINANT to respond to work-related calls and/or messages on his personal cell phone before and/or after and/or otherwise outside of his scheduled shift times without compensating COMPLAINANT for this work time. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to respond to work-related communications and/or complete other work tasks outside of their scheduled shift times, which said time was not recorded nor compensated, resulting in the underpayment of minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment and/or uniforms (e.g., rubber gloves and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

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. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Additionally, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated. For example, based on information and belief, EMPLOYER's electronic employee time-keeping system/app regularly malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were frequently required to either reinitiate the system/app prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in consistent off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum wages.

Based on further information and belief, EMPLOYER required/requires COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to undergo Covid testing outside of their scheduled shift times without compensating COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time to/from the testing sites, time spent waiting for the tests to be performed and/or time spent undergoing testing/fulfilling EMPLOYER' testing requirements, resulting in significant off-the-clock work and unpaid minimum and overtime wages.

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.<sup>5</sup>

**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.

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.

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<sup>5</sup> 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").

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.<sup>6</sup>

**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, including but not limited to, 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.

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

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<sup>6</sup> 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”).

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.<sup>7</sup>

**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 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

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<sup>7</sup> 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).

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 issued by EMPLOYER to COMPLAINANT list "Housing Matters" as the legal name of the employer. Other wage statements issued by EMPLOYER to COMPLAINANT list "Homeless Services Center" as the legal name of the employer. Documents in COMPLAINANT's personnel file, including but not limited to, job performance review(s) and/or policy document(s) identify "Homeless Services Center" as the employer. Still, other policy document(s) and/or job performance review(s) in COMPLAINANT's personnel file, as well as various letterheads contained in PLAINTIFF's personnel file all identify the following entity as the employer: "Housing Matters". As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information, including but not limited to the name and address of the legal entity that is the employer.

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.

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.<sup>8</sup>

**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.

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

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

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

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

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there

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<sup>8</sup> See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.<sup>9</sup>

**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, suitable seating, 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 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

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<sup>9</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

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, in or around early September 2021, EMPLOYER terminated COMPLAINANT's employment but did not provide COMPLAINANT with any final paycheck until at least one or two days following COMPLAINANT's termination, and COMPLAINANT's final paycheck once provided 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, 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.<sup>10</sup>

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

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

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

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<sup>10</sup> (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”).

COMPLAINANT was required to download and use an employee time-keeping application on his personal cell phones/mobile device and received work-related calls and/or messages from his supervisor to his personal cell phone/mobile device without receiving any reimbursement from EMPLOYER for the costs incurred as a result of being required to use his personal cell phone/mobile device for EMPLOYER's business purposes. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phones/mobile devices for work related purposes. Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also required to incur costs associated with the purchase and/or maintenance of work uniforms/work clothing, protective equipment and/or safety gear. For example, at times COMPLAINANT had to purchase his own face masks that EMPLOYER required for work.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of undergoing EMPLOYER's mandated Covid testing, including but not limited to purchasing the test, and/or the cost of traveling and/or using a personal vehicle to travel to and from a testing site.

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 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 FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring 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.

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.

**Failure to Provide a Safe and Healthful Workplace:** Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the California Occupational Safety and Health Act (“Cal OSHA”), employers must maintain a safe and healthful place of employment.

Specifically, Labor Code section 6400, requires the following:

- (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein...

Labor Code section 6401 provides as follows:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6402 prohibits the following:

No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Similarly, Labor Code section 6404 provides as follows:

No employer shall occupy or maintain any place of employment that is not safe and healthful.

In addition to the above, Labor Code section 6403 requires that employees provide safety devices to its employees. Labor Code section 6403 states:

No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Similarly, Labor Code section 6406(d) states the following:

No person shall do any of the following ... (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Finally, Labor Code section 6407 provides:

Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

At all relevant times, EMPLOYER employed COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-

6404, 6406, and 6407. However, EMPLOYER failed to provide a safe and healthful workplace due in part to its failure to provide personal protective equipment, including but not limited to, gloves and/or face masks, among other personal protective equipment. For example, as a custodian, COMPLAINANT had to handle and/or dispose of used needles/syringes found on the facility grounds/in the common areas. However, EMPLOYER failed to provide COMPLAINANT with any and/or adequate protective or safety equipment when dealing with the disposal of needles and/or syringes and/or failed to have a policy in place for the proper disposal of needles and/or syringes. Moreover, EMPLOYER failed to provide personal protective equipment required to maintain the health and safety of employees when dealing with feces and/or urination removal. For example, at times, COMPLAINANT was often required to remove feces from the common areas of EMPLOYER's facility, yet EMPLOYER failed to provide COMPLAINANT with any type of personal protective equipment or safety equipment and/or adequate personal protective equipment or safety equipment when dealing with the cleaning of feces and/or feces removal. Based on information and belief, EMPLOYER further failed to provide adequate protective or safety equipment to protect COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES from exposure to COVID-19 by including but not limited to, failing to provide any and/or adequate face masks, and/or hand sanitizers and/or disinfectant sprays.

As such, EMPLOYER failed to comply with the occupational safety and health standards, failed to do everything reasonably necessary to protect the health and safety of employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices necessary to maintain a safe and healthful workplace.

As a result of EMPLOYER's acts and omissions, EMPLOYER violated Labor Code section 6400-6404, and 6406-6407 as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES and is subject to civil penalties.

### **Conclusion**

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to, IWC Wage Order No. 4 and/or IWC Wage Order No. 5, and 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. Likewise, COMPLAINANT requests that the Division of Occupational Safety and Health investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, COMPLAINANT requests that the agency and division inform COMPLAINANT if they do not intend to investigate these violations so that COMPLAINANT may file a lawsuit with respect to the allegations discussed in this NOTICE.

If the LWDA and/or the Division of Occupational Safety and Health elect 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](mailto: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