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7 Attorneys for Plaintiff Yasmine Bayomi, on behalf of herself and all “aggrieved employees”
 pursuant to Labor Code § 2698 *et seq.*
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF LOS ANGELES**

11 YASMINE BAYOMI, on behalf of herself and
 12 all “aggrieved employees” pursuant to Labor
 Code § 2698 *et seq.*,

13 Plaintiff,

14 v.

15 CUROGRAM, INC., a Delaware corporation,
 16 and DOES 1 through 10, inclusive,

17 Defendants.
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CASE NO: **22SMCV02798**

**REPRESENTATIVE ACTION
 COMPLAINT FOR PENALTIES
 PURSUANT TO LABOR CODE § 2699(f)
 FOR VIOLATIONS OF LABOR CODE
 §§ 201, 202, 226(a), 226.7, 510, 512, AND
 1194 AND PURSUANT TO LABOR CODE
 § 2699(a) FOR VIOLATIONS OF
 LABOR CODE §§ 226.3 AND 558**

1 Plaintiff YASMINE BAYOMI (“Plaintiff”), on behalf of herself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§
3 2698 *et seq.*, complains of CUROGRAM, INC., a Delaware corporation, and/or any subsidiaries or
4 affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other persons improperly classified as independent contractors rather than non-exempt
9 employees who currently work or formerly worked for Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Voluntarily and knowingly misclassifying Plaintiff and certain Aggrieved
15 Employees as independent contractors, instead of non-exempt employees, in violation of Labor Code
16 § 226.8. Defendants controlled their wages, hours and working conditions. Specifically, Defendants
17 paid Plaintiff and Aggrieved Employees only for time spent actually at patients’ homes to collect a
18 kit through their return to Defendants’ jobsite. Defendants also provided them with a set hourly
19 schedule in which to disburse and collect patient kits, thereby controlling Aggrieved Employees’
20 working hours—including, among other things, the number of hours they were permitted to work and
21 their work schedules. Defendants also controlled their working conditions—including, among other
22 things, requiring Aggrieved Employees to report to a specific place for a specific shift and specific
23 hours worked. As Defendants had control over Aggrieved Employees’ wages, hours and working
24 conditions, Aggrieved Employees were improperly classified as independent contractors and instead
25 should have been classified as non-exempt employees;

26 b. Failing to pay Plaintiff and other Aggrieved Employees all minimum and
27 overtime wages earned, in violation of Labor Code §§ 510, 558, and 1194. Plaintiff and Aggrieved
28 Employees were required to work overtime hours, but were not paid premium overtime wages of one-

1 and-one-half times the regular rate of pay for all hours worked over eight hours in a workday and
2 over forty hours in a workweek (they were paid straight time for all hours worked). Furthermore,
3 Plaintiff and Aggrieved Employees were only paid for time spent actually at patients' homes to collect
4 a kit through their return to Defendants' jobsite—they were not paid for any other time spent working
5 for Defendants (such as driving to a patients' home) even though they were under Defendants'
6 control, resulting in significant unpaid wages. They were not always paid for their rest periods. These
7 failures to pay all minimum and overtime wages due and for all hours worked at the proper rates of
8 pay constitute violations of Labor Code §§ 510, 558, and 1194;

9 c. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
10 denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-
11 2001. Plaintiff and Aggrieved Employees were routinely denied, and not authorized to take, a proper,
12 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
13 second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten
14 hours, but were not paid premium wages of one hour's pay for each missed first or second meal
15 period. When Plaintiff and Aggrieved Employees were able to take a meal period, they were cut short,
16 late or on-duty, in violation of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 4-2001;

17 d. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
18 were denied on-the-clock rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No.
19 4-2001. Plaintiff and Aggrieved Employees were routinely unable to take a 10-minute rest period for
20 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
21 hour's pay for each missed rest period. When Plaintiff and Aggrieved Employees were able to take a
22 rest period, they were oftentimes late, cut short or on-duty, in violation of Labor Code § 226.7 and
23 IWC Wage Order No. 4-2001;

24 e. Failing to provide Plaintiff and all other Aggrieved Employees with wage
25 statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a).
26 Plaintiff and other non-exempt Aggrieved Employees were not paid all wages due, as stated above.
27 As such (and in addition), the wage statements provided by Defendants failed to accurately state all
28 gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in

violation of Labor Code §§ 226(a)(2) and 226.3, all deductions, in violation of Labor Code §§ 226(a)(4) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, the inclusive dates of the period for which the employee is paid, in violation of Labor Code §§ 226(a)(6) and 226.3, 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, in violation of Labor Code §§ 226(a)(7) and 226.3, the name and address of the legal entity that is the employer, in violation of Labor Code §§ 226(a)(8) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3;

f. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, Plaintiff and certain Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no longer employed by Defendants.

3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose throughout California, including in Los Angeles County.

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1 **II.**

2 **PARTIES**

3 **A. Plaintiff**

4 5. Plaintiff YASMINE BAYOMI was contracted with Defendants from July 2021
5 through November 2021 in Los Angeles County, California.

6 **B. Defendants**

7 6. Defendant CUROGRAM, INC. is a Delaware corporation that contracted with
8 Plaintiff and Aggrieved Employees in Los Angeles County, California.

9 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
10 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
11 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
12 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
13 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
14 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
15 designated hereinafter as DOES when such identities become known.

16 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
17 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
18 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
19 attributable to the other Defendants.

20 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
21 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
22 provisions of the California Labor Code as alleged herein.

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR CODE
§ 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, and 1194; and
- b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On September 26, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of September 26, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: December 20, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff