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Assigned for All Purposes
Judge William Claster

cx-104

9 Attorneys for Plaintiff BEVERLY WOLF,
10 on behalf of herself, the State of California,
11 and others similarly situated and aggrieved

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ORANGE**

15 BEVERLY WOLF, on behalf of herself,
16 the State of California, and others similarly
17 situated and aggrieved,

18 Plaintiff,

19 v.

20 CAL-AM PROPERTIES, INC., a
21 California corporation; LIEBERT
22 CORPORATION, a California
23 corporation; PACIFIC MOBILE III, L.P.,
24 a California limited partnership; PACIFIC
25 MOBILE IV, L.P., a California limited
26 partnership; and DOES 1-100, inclusive,

27 Defendants.

Case No.: 30-2022-01294324-CU-OE-CXC

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

1 Plaintiff BEVERLY WOLF ("PLAINTIFF" or "PLAINTIFF WOLF"), an individual on
2 behalf of herself, the State of California, and all other Aggrieved Employees (defined below), hereby
3 files this Complaint against Defendants CAL-AM PROPERTIES, INC., a California corporation;
4 LIEBERT CORPORATION, a California corporation; PACIFIC MOBILE III, L.P., a California
5 limited partnership; PACIFIC MOBILE IV, L.P., a California limited partnership; and DOES 1-
6 100, inclusive,, (collectively referred to herein as "DEFENDANTS"). PLAINTIFF is informed and
7 believes and thereon alleges as follows:

8 **INTRODUCTION**

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

15 **JURISDICTION AND VENUE**

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

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

25 **THE PARTIES**

26 4. PLAINTIFF resides in the State of California. PLAINTIFF worked for
27 DEFENDANTS in the State of California as a non-exempt employee during the relevant period.
28 PLAINTIFF worked for DEFENDANTS as an onsite property manager, community manager and/or

1 similar title from in or around 2013 through in or around 2018, and again from in or around August
2 2019 to in or around mid-October 2021, when PLAINTIFF went on leave. PLAINTIFF was
3 assigned to work out of DEFENDANTS' locations, including but not limited to, Tara Hills Mobile
4 Manor property located in San Pablo, California and subsequently assigned to DEFENDANTS'
5 Parklane Mobile Estates property located in Canyon Country, California.

6 5. DEFENDANTS are each either a California corporation and/or California limited
7 partnership, that, at all relevant times, was authorized to do business within the State of California
8 and is doing business in the State of California.

9 6. DEFENDANTS owns, operate or otherwise manage community properties,
10 including but not limited to, manufactured home communities and apartment communities,
11 throughout California. DEFENDANTS employed PLAINTIFF and Aggrieved Employees at their
12 California locations, including but not limited to, any one or more of the following communities
13 operated by DEFENDANTS: Citrus Glen Apartments in Ventura, CA; Colonial Country Club, in
14 Hemet, CA; Fairlane Mobile Lodge, in Garden Grove, CA; Gardena Villas, in Gardena, CA; Kona
15 Kai Estates, in Oxnard, CA; Niles Canyon, in Fremont, CA; Orange Mobile Home Park, in Orange,
16 CA; Parklane Mobile Estates, in Canyon Country, CA; Southlake, in Fremont, CA; Tara Hills
17 Mobile Manor, in San Pablo, CA; and Mountain View Park, in Hemet, CA.

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

24 8. PLAINTIFF is further informed and believes that, at all relevant times, each
25 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
26 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
27 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
28 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all

1 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
2 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
3 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
4 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
5 controlled, aided and abetted the conduct of all other Defendants.

6 **JOINT LIABILITY**

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

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

24 11. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
25 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
26 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
27 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
28 policies and practices regardless of the location(s) where they worked. Among other things,

1 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
2 in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
3 over the day-to-day operations and employment matters, including the power to hire and fire, set
4 schedules, issue employee policies, and determine rates of compensation across its locations in
5 California; (3) DEFENDANTS utilize the same policies and procedures for all California
6 employees, including issuing the same employee handbooks and other form agreements; (4)
7 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
8 employment matters; and, (6) DEFENDANTS share employees.

9 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
10 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
11 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
12 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
13 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
14 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
15 Employees. For example, DEFENDANTS issued wage statements to PLAINTIFF WOLF that
16 identify Tara Hills Mobile and/or Parklane Mobile as the DEFENDANTS with the following
17 address that is consistent with the principal address for Cal-Am Properties, Inc., as provided to the
18 California Secretary of State: 385 Clinton Street Costa Mesa, California 92626. However, based on
19 information and belief, Parklane Mobile is located at 20401 Soledad Canyon Road, Canyon
20 Country, CA 91351, and Tara Hills Mobile is located at 16401 San Pablo Avenue, San Pablo, CA
21 94806. Moreover, Cal-Am Properties, Inc. is identified as the employer on most of the documents
22 contained in PLAINTIFF WOLF's personnel file, including but not limited to, PLAINTIFF
23 WOLF's employment application, DEFENDANTS' 2810.5 notice to employee, and letterheads
24 and/or other documents within PLAINTIFF WOLF's personnel file that all display the name Cal-
25 Am Properties, Inc. and/or Cal-Am Properties, Inc. logo. Still, other document(s) in PLAINTIFF
26 WOLF's personnel file, including but not limited to, employee acknowledgment(s) and/or other
27 policy document(s) identify Pacific Mobile III as the employer.

28 13. As such, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies,

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

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

20 15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
21 control over, applied the same policies and practices, and engaged in the same acts and omissions
22 with regard to the other Aggrieved Employees.

23 **PAGA ALLEGATIONS**

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

27 All current and former non-exempt employees employed by the DEFENDANTS at any
28 facility/location owned, operated and/or managed by DEFENDANTS in California at any

1 time from one year plus 65 days from filing of the initial Complaint through the present
2 ("PAGA Period").

3 17. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
4 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
5 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
6 PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other Aggrieved
7 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
8 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
9 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
10 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
11 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
12 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

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

14 18. On September 19, 2022, PLAINTIFF WOLF, through counsel, gave written notice
15 by online filing with the California Labor and Workforce Development Agency ("LWDA")
16 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
17 allegations alleged in this Complaint ("PLAINTIFF WOLF's PAGA Notice"). The LWDA assigned
18 PLAINTIFF the following case number: LWDA-CM-908906-22. PLAINTIFF WOLF's PAGA
19 Notice, a true and correct copy of which is attached hereto as **Exhibit 1**, was also sent to
20 DEFENDANTS via certified mail.

21 19. PLAINTIFF WOLF's PAGA Notice outlined PLAINTIFF WOLF's claims for
22 violations of the California Labor Code and the applicable wage orders on behalf of herself, the
23 State of California and other Aggrieved Employees.

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

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

FACTUAL ALLEGATIONS

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

23. PLAINTIFF WOLF was employed by DEFENDANTS' as a non-exempt employee. PLAINTIFF worked for DEFENDANTS' as an onsite property manager, community manager and/or similar title from in or around 2013 through in or around 2018, and again from in or around August 2019 to in or around mid-October 2021, when PLAINTIFF WOLF when on leave. PLAINTIFF WOLF was assigned to work out of DEFENDANTS' locations, including but not limited to, Tara Hills Mobile Manor property located in San Pablo, California and subsequently assigned to DEFENDANTS' Parklane Mobile Estates property located in Canyon Country, California.

24. PLAINTIFF regularly worked at least eight (8) hours per day, at least (5) days per week. At times, PLAINTIFF was paid a fixed amount each pay period. At other times, based on information and belief, DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. At times, DEFENDANTS also provided PLAINTIFF with onsite lodging which DEFENDANTS accounted for as a portion of her earned compensation.

25. During the relevant period, based on information and belief, DEFENDANTS misclassified PLAINTIFF and other Aggrieved Employees as salaried/exempt employees to try to evade California wage and hour laws including but not limited to, payment of minimum and overtime wages and provision of meal and rest periods even though PLAINTIFF and other misclassified Aggrieved Employees did not satisfy any test for exemption under California law. For example, based on information and belief, PLAINTIFF did not regularly exercise discretion/independent judgment in her job and typically spent more than fifty percent of her workday performing non-exempt duties such as, but not limited to, answering phone calls,

1 scheduling maintenance workers, among other clerical/ministerial duties.

2 26. Based on further information and belief, PLAINTIFF and other Aggrieved
3 Employees were not compensated with a monthly salary (exclusive of the value of any lodging) that
4 equated to twice the California minimum wage rate. See, Labor Code section 515 and Cal. Code of
5 Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must earn “a
6 monthly salary equivalent to no less than two (2) times the state minimum wage for full-time
7 employment”].

8 27. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
9 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
10 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
11 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
12 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
13 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
14 below.

15 28. Based on information and belief, Aggrieved Employees were not paid for all hours
16 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
17 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.
18 Based on information and belief, Aggrieved Employees were not paid for all hours worked due to
19 DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of
20 actual time worked, and/or mandated off-the clock work policies and/or practices. For example,
21 PLAINTIFF was required to monitor her work phone and be on call twenty-four hours per day,
22 seven (7) days per week, including but not limited to, on purported days off and/or what were
23 supposed to be vacation days. PLAINTIFF would regularly have to assist tenants and/or perform
24 other work duties after hours without being compensated for this on-call time/time spent performing
25 work duties outside of her scheduled shift times. PLAINTIFF's supervisors informed PLAINTIFF
26 that it was part of her job to so monitor her phone for any work calls and respond to any
27 property/tenant issues twenty-four hours per day seven (7) days per week. Based on information
28 and belief, other Aggrieved Employees were also required, suffered and/or permitted to monitor

1 work communication devices, respond to work situations, work-related phone calls and/or text
2 messages and/or be on call outside of their scheduled shift times without being compensated for all
3 time spent under DEFENDANTS' control.

4 29. PLAINTIFF and other Aggrieved Employees were required to perform other pre-
5 shift and/or post-shift work off-the-clock work for which they were not compensated. For example,
6 based on information and belief, PLAINTIFF and other Aggrieved Employees were required to
7 undergo Covid-temperature screenings and/or Covid-testing prior to clocking in to work and/or
8 otherwise outside of their scheduled shift times, which said time spent undergoing DEFENDANTS'
9 mandated testing/screening procedures was not recorded nor compensated, resulting in the
10 underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees.

11 30. Based on information and belief, DEFENDANTS failed to pay Aggrieved
12 Employees for time they were required to spend completing orientation, policy questionnaires,
13 and/or time spent completing the onboarding process including but not limited to reviewing various
14 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
15 was completed off-the-clock and was not compensated.

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

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

27 33. Based on information and belief, DEFENDANTS misclassified Aggrieved
28 Employees as exempt employees to try to evade California wage and hour laws including but not

1 limited to, payment of minimum and overtime wages and provision of meal and rest periods even
2 though misclassified Aggrieved Employees did not satisfy any test for exemption under California
3 law. For example, based on information and belief, PLAINTIFF and other Aggrieved Employees
4 did not regularly exercise discretion/independent judgment in their jobs and typically spent more
5 than fifty percent of their workday performing non-exempt duties such as, but not limited to,
6 scheduling maintenance workers, collecting signatures on documents/clerical/ministerial duties,
7 and/or other non-discretionary duties not requiring the exercise of independent judgment to perform.

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

13 35. Based on information and belief, Aggrieved Employees that were paid on a salary
14 basis and/or otherwise misclassified as exempt were denied all owed minimum and overtime wages
15 due to DEFENDANTS’ misclassification scheme.

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

24 37. Based on information and belief, DEFENDANTS had and has a policy and practice
25 of unlawfully crediting lodging against the minimum wages owed to Aggrieved Employees,
26 resulting in the underpayment of minimum wages owed to Aggrieved Employees. For example,
27 based on information and belief, DEFENDANTS credits lodging towards its minimum wage
28 obligations to Aggrieved Employees that exceeds the maximum allowable rental credit under

1 California law and/or DEFENDANTS fails to execute voluntary written agreement(s) to credit
2 lodging against its minimum wage obligations due to, including but not limited to, failure to
3 explicitly state that the rental credit is being applied towards the employer's minimum wage
4 obligations and/or failure to execute any voluntary written agreement, as required under California
5 law. See Section 10 of IWC Wage Order Section 5-2001 (and all applicable IWC Wage Orders).

6 38. Based on information and belief, DEFENDANTS had actual and/or constructive
7 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
8 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
9 underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees, in
10 violation of California's minimum and overtime wage laws.

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

15 40. Based on information and belief, DEFENDANTS sometimes paid Aggrieved
16 Employees multiple rates of base pay in one workweek but failed to incorporate all multiple rates
17 of base pay into the regular rate of pay for purposes of calculating the owed overtime rate, resulting
18 in unpaid wages to Aggrieved Employees.

19 41. Based on information and belief, DEFENDANTS failed to incorporate all non-
20 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
21 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
22 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
23 Aggrieved Employees.

24 42. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
25 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
26 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
27 (30) minute first (and second) meal periods. Based on information and belief, Aggrieved Employees
28 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often

1 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
2 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
3 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
4 completely. For example, PLAINTIFF was required to monitor her work phone at all times,
5 including during purportedly off-duty meal periods and consistently had her meal periods
6 interrupted with work-related calls/text messages she was required to respond to.

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

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

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

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

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

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

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

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

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

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

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

1 the taking of duty-free rest periods.

2 54. Based on information and belief, DEFENDANTS did not have a have a compliant
3 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
4 practice. For example, PLAINTIFF was consistently forced to cut any rest breaks short or skip them
5 completely due to the nature of the work and/or lack of relief workers available to perform work
6 tasks that had to be done immediately, e.g, responding to inquiries/concerns from
7 tenants/prospective tenants/staff members and/or completing other work tasks. Based on
8 information and belief, Aggrieved Employees' rest periods were interrupted, cut short, on duty,
9 restricted to premises and/or late due to understaffing, the nature and constraints of their job duties,
10 and/or due to commentary from supervisors/managers pressuring them to skip rest periods
11 completely or otherwise take non-compliant rest periods.

12 55. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
13 lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer than ten
14 (10) hours, PLAINTIFF was not provided with any version of a third rest period.

15 56. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
17 DEFENDANTS' control during rest periods. For example, PLAINTIFF was required to
18 continuously monitor her work phone for incoming calls/messages and tend to the needs of property
19 residents and/or complete other work tasks as they would arise, including but not limited to, during
20 any purportedly off-duty rest periods.

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

24 58. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
25 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in
26 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
27 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
28 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,

1 shift differential pay, and/or other non-discretionary compensation into the regular rate of
2 compensation for purposes of calculating the owed rest period premium.

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

11 **60.** DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
12 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
13 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
14 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
15 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
16 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
17 other off-the-clock work policies and practices described above, including but not limited to,
18 whenever working a shift in which the employee earned a shift differential) which results in a
19 violation of Labor Code section 226(a).

20 **61.** Based on information and belief, wage statements issued by DEFENDANTS failed
21 to list all applicable hourly rates in effect during the pay period and the corresponding number of
22 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
23 For example, as described herein, based on information and belief, DEFENDANTS also failed to
24 incorporate all forms of non-discretionary compensation earned during the pay period (including
25 but not limited to, shift differential pay and/or non-discretionary bonus/incentive pay and/or other
26 non-discretionary compensation) into the overtime pay rate calculation, and as such, failed to display
27 the proper overtime rate(s) for each hour of overtime worked by Aggrieved Employees.

28 **62.** Moreover, based on information and belief, DEFENDANTS issued wage statements

1 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
2 other things, failing to list the correct name and/or address of the legal entity that is the employer.

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

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

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

17 66. These violations subject DEFENDANTS to civil penalties under Labor Code section
18 203, 210, and/or 256.

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

25 68. Based on information and belief, DEFENDANTS shifted its costs of doing business
26 onto Aggrieved Employees by requiring them to pay for its business expenses, including but not
27 limited to, uniforms and/or the use of Aggrieved Employees' personal mobile phone and data usage
28 for work related purposes including but not limited to receiving and responding to work related

1 messages and/or phone calls. Based on information and belief, Aggrieved Employees were not
2 reimbursed for the cost of using their personal phone for work related purposes and/or the cost of
3 purchasing and/or maintaining work uniforms/clothing and/or safety/protective equipment (e.g.,
4 face masks).

5 69. Based on information and belief, Aggrieved Employees were improperly required to
6 pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

7 70. Based on information and belief, DEFENDANTS did not reimburse Aggrieved
8 Employees for the costs they incurred in having to purchase/maintain their own work tools,
9 including but not limited to, cleaning supplies and/or maintenance supplies and/or other tools they
10 required to perform their job duties.

11 71. Based on information and belief, DEFENDANTS failed to reimburse PLAINTIFF
12 and other Aggrieved Employees for the cost of using their home internet/electricity for work
13 purposes, including but not limited to, reviewing training materials, policies and/or other documents
14 as required by DEFENDANTS.

15 72. Based on further information and belief, Aggrieved Employees incurred expenses
16 associated with being required to use their personal vehicles for work without receiving any/full
17 reimbursement from DEFENDANTS for the costs they incurred in connection therewith. For
18 example, based on information and belief, DEFENDANTS required PLAINTIFF to use her personal
19 vehicle for business purposes, such as, but not limited to, driving to the bank and/or other
20 commercial establishments for DEFENDANTS' business purposes and/or dropping off/picking up
21 items at DEFENDANTS' various properties and/or attending training meetings, among other job
22 duties, without reimbursing PLAINTIFF for this personal vehicle use.

23 73. Based on information and belief, DEFENDANTS did not reimburse Aggrieved
24 Employees for the cost of undergoing DEFENDANTS-mandated covid testing, including but not
25 limited to purchasing the test, and/or the cost of traveling and/or using a personal vehicle to and
26 from a testing site.

27 74. Based on information and belief, DEFENDANTS regularly failed to reimburse and
28 indemnify Aggrieved Employees for the above-described business expenses. Pursuant to California

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

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

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

15 77. DEFENDANTS failed to give PLAINTIFF and other Aggrieved Employees notice
16 of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code
17 section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick
18 leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
19 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

24 79. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
25 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
26 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
27 were entitled to the maximum number of hours accruable.

28 80. Upon information and belief, DEFENDANTS failed and continue to fail to comply

1 with Labor Code section 246, by failing to provide PLAINTIFF and Aggrieved Employees with a
2 Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
3 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
4 wages.

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

6 82. On information and belief, PLAINTIFF alleges that all of these practices were
7 experienced and continue to be experienced by other Aggrieved Employees.

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

14 84. **Record-Keeping Violations.** Due to the unlawful policies and practices described
15 herein, DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records
16 as required by Labor Code section 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
17 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
18 required by law, including but not limited to the following records: total daily hours worked,
19 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
20 began and ended each work period, time records of meal periods, and accurate itemized wage
21 statements.

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

28 86. Moreover, based on information and belief, DEFENDANTS failed to keep accurate

1 records and issue accurate wage statements by not showing total wages paid each payroll period,
2 including value of board, lodging or other compensation furnished to Aggrieved Employees.

3 87. Additionally, DEFENDANTS failed and continue to fail to keep accurate records
4 and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and
5 Aggrieved Employees.

6 88. **Failure to Produce Records.** Based on information and belief, DEFENDANTS fail
7 to timely produce or make available a current or former employee's personnel records and/or payroll
8 records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable
9 Wage Order. For example, on February 22, 2022, PLAINTIFF, through counsel, sent a written
10 request for personnel, time and pay records to DEFENDANTS. Yet, DEFENDANTS failed to
11 produce any records within the time periods delineated by California labor law. Based on
12 information and belief, DEFENDANTS failed and continue to fail to timely produce complete
13 payroll and personnel records when requested by other Aggrieved Employees, resulting in violations
14 of Labor Code sections 226(b)-(c), 1198.5, and 432 and the applicable Wage Order.

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

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

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

28 92. **Statutory Wage Violations.** As described above, DEFENDANTS willfully and

1 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
2 for all hours worked which resulted in the payment of less than the statutorily required wages owed
3 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
4 not limited to, overtime wages and minimum wages, to which they were entitled to under California
5 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
6 Aggrieved Employees lower wages than those they were entitled to while purporting that
7 PLAINTIFF and other Aggrieved Employees were properly paid.

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

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

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

21 96. **Unlawful Inquiries into Salary History:** Based on information and belief,
22 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal
23 their salary history when applying for employment with DEFENDANTS. For example, when
24 PLAINTIFF applied for employment with DEFENDANTS, PLAINTIFF was required to fill out an
25 application that requested, among other things, the following information: Name and address of
26 former employer, length of former employment relationship, and the "starting" and "ending"
27 "hourly rate/salary" and/or "base rate of pay" of the former employment relationship. Based on
28 information and belief, DEFENDANTS required other Aggrieved Employees to disclose the same

1 or similar information, in violation of Labor Code section 432.3. Moreover, by requiring Aggrieved
2 Employees to disclose prior salary information in a written application for employment,
3 DEFENDANTS violated Labor Code section 432.5 by requiring Aggrieved Employees to agree in
4 writing to disclose their salary history as a condition of obtaining employment with DEFENDANTS,
5 in violation of California law.

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

21 **FIRST CAUSE OF ACTION**

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

23 **2698, ET SEQ.**

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

26 98. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 99. **Meal Period Violations.** California law requires employers to provide employees a
28 duty-free, uninterrupted, thirty-minute meal period when an employee works more than five (5)

1 hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab.
2 Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant*
3 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Upon information and belief, PLAINTIFF did not
4 sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

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

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

21 102. Employers must pay employees an additional hour of wages at the employees'
22 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
23 meal period, first meal period provided after five (5) hours, second meal period provided after 10
24 hours). Lab. Code section 226.7; all applicable IWC Wage Orders, section 11(B) ("If an employer
25 fails to provide an employee a meal period in accordance with the applicable provision of this Order,
26 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
27 compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th
28 1004.

1 103. DEFENDANTS have a consistent policy and/or practice of not providing lawful
2 meal periods to PLAINTIFF and Aggrieved Employees and/or providing compensation in lieu
3 thereof. As explained above, PLAINTIFF and other Aggrieved Employees were consistently unable
4 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
5 forced to take late meal periods, interrupted meal periods and/or work through part or all their
6 purported meal periods. Moreover, DEFENDANTS failed to keep accurate records of meal period
7 start and end times.

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

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

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

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

1 shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10
2 hours up to 14 hours. (Id. at 1029). The rest period requirement obligates employers to permit and
3 authorize employees to take off-duty rest periods, meaning employers must relieve employees of all
4 duties and relinquish control over how employees spend their time. *Augustus v. ABM Security*
5 *Services, Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the
6 employer must pay the employee one hour of pay at the employee's regular rate of compensation
7 for each workday the employer did not provide at least one legally required rest period, pursuant to
8 Labor Code section 226.7, and all applicable IWC Wage Orders, section 12(B).

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

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

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

25 111. **Unpaid Minimum and Overtime Wages.** California law provides that employees
26 in California must be paid for all hours worked, up to forty per week or eight (8) per day, at a regular
27 rate that is no less than the mandated minimum wage. See Labor Code section 1197 and the
28 applicable Wage Order. The minimum wage standard applies to each hour employees worked for

1 which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by
2 an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or
3 not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135
4 Cal.App.4th 314, 324.

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

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

21 114. As explained above, DEFENDANTS failed to compensate PLAINTIFF and other
22 Aggrieved Employees for all hours worked by virtue of DEFENDANTS' automatic deductions and
23 time rounding policies, payment according to scheduled hours worked instead of actual time
24 worked, mandated pre-shift/post shift/ and/or other off-the-clock work policies and/or practices and
25 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
26 unlawful practices for missed or improper meal periods. This regular performance of off-the-clock
27 work resulted in the underpayment of minimum wages owed to Aggrieved Employees, the
28 underpayment of overtime wages for those Aggrieved Employees who worked more than eight (8)

1 hours per workday or more than forty per week, the underpayment of "double time" wages for those
2 Aggrieved Employees who worked more than twelve (12) hours per workday or more than eight (8)
3 hours on the seventh consecutive day of work, as well as record-keeping violations.

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

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

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

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

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

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

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

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

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

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

23 125. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
24 they could not easily determine whether they received all wages owed to them and whether they
25 were paid for all hours worked.

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

1 the employer.

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

5 128. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave
6 laws including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to
7 provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
8 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (by
9 virtue of DEFENDANTS' meal period auto-deduction and time rounding practices and off-the-
10 clock work described herein), and/or failure to incorporate all forms of non-discretionary
11 remuneration into the sick pay calculation.

12 129. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved
13 Employees notice of their paid sick leave rights - or thereby putting their entitlement to sick
14 leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain
15 accurate records of used sick leave and the balance of paid sick leave left to the employees,
16 which affected PLAINTIFF and Aggrieved Employees' intelligent exercise of their paid sick
17 leave.

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

22 131. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain
23 records documenting the hours worked and paid sick days accrued and used by PLAINTIFF
24 and all Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved
25 Employees were entitled to the maximum number of hours accruable.

26 132. Upon information and belief, DEFENDANTS failed and continue to fail to
27 comply with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved

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

1 Employees with a Labor Code section 226 wage statement, or separate writing containing the
2 amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
3 leave, at the time it pays wages.

4 133. These practices violated California's sick leave laws, Labor Code section 245, et
5 seq.

6 134. On information and belief, PLAINTIFF alleges that all of these practices were
7 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

28 138. **Record-Keeping Violations.** California Labor Code sections 226 and 1174

1 require DEFENDANTS to keep "accurate and complete" payroll records showing, among other
2 things, the hours worked daily by all non-exempt employees. Section 7 of all applicable IWC
3 Wage Orders similarly requires employer to keep time records showing, inter alia, when the
4 employees begin and end each work period and reflecting the true start and end times during
5 which all owed meal periods are provided each day. At all relevant times, DEFENDANTS have
6 failed, and continue to fail, to keep the required time records, as DEFENDANTS have failed to
7 record the true start and end times of PLAINTIFF's and other Aggrieved Employees' workdays
8 and failed to record PLAINTIFF's and other Aggrieved Employees' meal periods. Moreover,
9 based on information and belief, DEFENDANTS failed to keep accurate records and issue
10 accurate wage statements by not showing total wages paid each payroll period, including value
11 of board, lodging or other compensation furnished to Aggrieved Employees. DEFENDANTS'
12 failure to keep "accurate and complete" payroll records for PLAINTIFF and the Aggrieved
13 Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all applicable IWC
14 Wage Orders. These violations subject DEFENDANTS to civil penalties under the Labor Code,
15 including without limitation sections 1174.5 and 2699. Each violation of each Labor Code
16 section and Wage Order provision, for each aggrieved employee, results in a separate civil
17 penalty.

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

25 140. Section (b) of Labor Code section 226 further requires employers to "afford current
26 and former employees the right to inspect or receive a copy of records pertaining to their
27 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
28 provides that, "an employer who receives a written or oral request to inspect or receive a copy of

1 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
2 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
3 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
4 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
5 the employer. Lab. Code section 226(f).

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

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

19 143. **Unreimbursed Business Expenses**. California law requires employers to
20 indemnify their employees for all necessary expenditures incurred by the employee in direct
21 consequence of the discharge of their duties or of their obedience to the directions of the
22 DEFENDANTS. See Cal. Lab. Code section 2802(a) and all applicable Wage Orders, section
23 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses'
24 shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the
25 employee enforcing the rights granted by this section." Cal. Lab. Code section 2802(c).
26 Moreover, "any contract or agreement, express or implied, made by any employee to waive the
27 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
28 employee or his personal representative of any right or remedy to which he is entitled to under

1 the laws of this State." See Cal. Lab. Code section 2804. Among other things, under California
2 law, when tools or equipment are required by the employer or are necessary to the performance
3 of a job, such tools and equipment shall be provided and maintained by employer, except that
4 an employee whose wages are at least two (2) times the minimum wage provided herein may
5 be required to provide and maintain hand tools and equipment customarily required by the trade
6 or craft. See applicable IWC Wage Order, section 9 (b). Among other things, under California
7 law, when employees must use their personal cellphones for work-related purposes, the
8 employer must reimburse them for a reasonable percentage of their cell phone bills. See
9 *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show
10 liability, an employee will only need to show that he or she was required to use their personal
11 cellphone for work-related purposes and not reimbursed for the use. Id. 1144-1145.

12 144. On information and belief, at all relevant times hereto, DEFENDANTS shifted
13 its costs of doing business onto Aggrieved Employees by requiring them to pay for its business
14 expenses, including but not limited to, uniforms and/or the use of Aggrieved Employees' personal
15 mobile phone and data usage for work related purposes including but not limited to receiving and
16 responding to work related messages and/or phone calls. Based on information and belief,
17 Aggrieved Employees were not reimbursed for the cost of using their personal phone for work
18 related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing and/or
19 safety/protective equipment (e.g., face masks).

20 145. Based on information and belief, Aggrieved Employees were improperly required to
21 pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

22 146. Based on information and belief, DEFENDANTS did not reimburse Aggrieved
23 Employees for the costs they incurred in having to purchase/maintain their own work tools,
24 including but not limited to, cleaning supplies and/or maintenance supplies and/or other tools they
25 required to perform their job duties.

26 147. Based on information and belief, DEFENDANTS failed to reimburse PLAINTIFF
27 and other Aggrieved Employees for the cost of using their home internet/electricity for work
28 purposes, including but not limited to, reviewing training materials, policies and/or other documents

1 as required by DEFENDANTS.

2 148. Based on further information and belief, Aggrieved Employees incurred expenses
3 associated with being required to use their personal vehicles for work without receiving any/full
4 reimbursement from DEFENDANTS for the costs they incurred in connection therewith. For
5 example, based on information and belief, DEFENDANTS required PLAINTIFF to use her personal
6 vehicle for business purposes, such as, but not limited to, driving to the bank and/or other
7 commercial establishments for DEFENDANTS' business purposes and/or dropping off/picking up
8 items at DEFENDANTS' various properties and/or attending training meetings, among other job
9 duties, without reimbursing PLAINTIFF for this personal vehicle use.

10 149. Based on information and belief, DEFENDANTS did not reimburse Aggrieved
11 Employees for the cost of undergoing DEFENDANTS-mandated covid testing, including but not
12 limited to purchasing the test, and/or the cost of traveling and/or using a personal vehicle to and
13 from a testing site.

14 150. Based on information and belief, DEFENDANTS regularly failed to reimburse and
15 indemnify Aggrieved Employees for the above-described business expenses. Pursuant to California
16 Labor Code section 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed
17 for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out
18 the duties assigned by DEFENDANTS.

19 151. DEFENDANTS' failure to provide Aggrieved Employees with full
20 reimbursement for all reasonable expenses associated with carrying out their duties required
21 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation
22 of Labor Code section 2802 and section 9 of all applicable IWC Wage orders. Accordingly,
23 this constitutes a PAGA violation based on violations of Labor Code section 2802 and section
24 9 of the applicable wage order.

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

1 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
2 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and
3 unreimbursed business expenses, result in separate violations of sections 1198 and 1199, which
4 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

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

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

20 **155. Untimely Payment of Final Wages.** DEFENDANTS failed to timely Aggrieved
21 Employees all wages that were due and owing upon termination or resignation. Labor Code sections
22 201 and 202, together require employers to pay all wages immediately upon discharge and/or within
23 72 hours of an employees' resignation. Upon separation of employment, Aggrieved Employees'
24 final paychecks were not timely provided. Based on information and belief, DEFENDANTS did not
25 pay final wages in accordance with the timing requirements set forth in Labor Code sections 201
26 and 202. Based on information and belief, DEFENDANTS provide final wages to Aggrieved
27 Employees on the regular pay day without regard to the timing requirements of Labor Code sections
28 201-202.

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

8 157. **Unlawful Inquiries into Salary History:** Based on information and belief,
9 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal
10 their salary history when applying for employment with DEFENDANTS. For example, when
11 PLAINTIFF applied for employment with DEFENDANTS, PLAINTIFF was required to fill out an
12 application that requested, among other things, the following information: Name and address of
13 former employer, length of former employment relationship, and the "starting" and "ending"
14 "hourly rate/salary" and/or "base rate of pay" of the former employment relationship. Based on
15 information and belief, DEFENDANTS required other Aggrieved Employees to disclose the same
16 or similar information, in violation of Labor Code section 432.3. Moreover, by requiring Aggrieved
17 Employees to disclose prior salary information in a written application for employment,
18 DEFENDANTS violated Labor Code section 432.5 by requiring Aggrieved Employees to agree in
19 writing to disclose their salary history as a condition of obtaining employment with DEFENDANTS,
20 in violation of California law.

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

26 159. Based on information and belief, DEFENDANTS failed to provide Aggrieved
27 Employees who were compensated on a commission basis with proper written commission
28 agreements, in violation of Labor Code section 2751.

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

8 161. The California Labor Code places certain procedural and substantive limits on an
9 employer's ability to conduct employee background checks and on how employers can use the
10 information they obtain through these background checks. Upon information and belief,
11 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit or agree to submit
12 to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
13 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
14 and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in
15 writing to unlawful background checks not in conformance with the requirements of the
16 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
17 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
18 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of
19 employment, in violation of Labor Code section 432.5. Based on information and belief,
20 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to agree in writing to a
21 background check which failed to abide by the requirements set forth in CA Civil Code section
22 1786, et seq. and 15 U.S.C. section 1681, et seq., by including but not limited to, failing to provide
23 a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information
24 (including but not limited to, e.g., a liability release/waiver and/or information that is solely relevant
25 to applicants from different states), failing to provide a lawful purpose for the background check,
26 failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way
27 by which the individual could request a copy of the report, and failing to properly obtain
28 authorization or consent to such a background check, and thus was an unlawful background check.

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

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

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

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

20 165. These violations subject DEFENDANTS to civil penalties under the Labor Code,
21 including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each
22 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
23 civil penalty.

24 166. Under the provisions of PAGA and the above-mentioned Labor Code sections,
25 including but not limited to, Labor Code sections 201, 202, 203, 210, 216, 221-223, 225.5, 226,
26 226.3, 226.7, 227.3, 245-248.5, 256, 432, 432.3, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1024.5,
27 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2751, 2802, 2810.5 and all applicable
28 Wage Orders as well as all interpretations of these laws by California Courts and administrative

1 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
2 the following penalties:

- 3 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
4 relevant California Labor Code provisions listed herein only if permitted by the
5 PAGA statute, pursuant to Labor Code section 2699(a); and
6 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
7 violations without a civil penalty recoverable under the PAGA, all in the default
8 amounts provided by Labor Code section 2699(f).
9 c. The proper measure of penalties under PAGA is the number of violations,
10 whether those violations were committed as against Plaintiff or any Aggrieved
11 Employee, whether a party to this action or not.

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

14 **PRAYER FOR RELIEF**

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

- 17 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
18 25% payable to Aggrieved Employees);
19 2. For reasonable attorney's fees and costs of suit; and
20 3. For such other and further relief that the Court deems just and proper.

21 Dated: November 29, 2022

CROSNER LEGAL, PC

22
23 By: 

24 Michael R. Crosner, Esq.
25 Zachary M. Crosner, Esq.
26 Jamie Serb, Esq.
27 Attorneys for Plaintiff,
28 BEVERLY WOLF

EXHIBIT

1



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September 19, 2022

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Kenneth L. Friedman,
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CAL-AM Properties, Inc.
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Encino, CA 91436

N. Scott Liebert,
Agent for Service of Process for:
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Pacific Mobile III, L.P.
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Liebert Corporation

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1033 Gayley Avenue, Suite 200
Los Angeles, CA 90024

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; CAL-AM Properties, Inc.; Pacific Mobile III, L.P.; Pacific Mobile IV, L.P. ; Liebert Corporation
Date: September 19, 2022
Subject: *Beverly Wolf v. CAL-AM Properties, Inc., et al.*

Introduction

This office represents COMPLAINANT, Beverly Wolf (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entity: CAL-AM Properties, Inc.; Pacific Mobile III, L.P.; Pacific Mobile IV, L.P.; and Liebert Corporation (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 at any location 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 at any location 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© 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 Ca¹4th 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.App⁴ 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 housing communities, including but not limited to, manufactured home communities and apartment communities, throughout California. At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission (“IWC”) Wage Order. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California’s labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as an onsite property manager, community manager and/or similar title from in or around 2013 through in or around 2018, and again from in or around August 2019 to in or around mid-October 2021, when COMPLAINANT was on leave. COMPLAINANT was assigned to work out of EMPLOYER’s locations, including but not limited to, Tara Hills Mobile Manor property located in San Pablo, California¹ and subsequently assigned to EMPLOYER’s Parklane Mobile Estates property located in Canyon Country, California².

COMPLAINANT regularly worked at least eight (8) hours per day, at least (5) days per week. At times, COMPLAINANT was paid a fixed amount each pay period. At other times, based on information and belief, EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked. At times, EMPLOYER also provided COMPLAINANT with onsite lodging which EMPLOYER accounted for as a portion of her earned compensation.

During the relevant period, based on information and belief, EMPLOYER misclassified COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as salaried/exempt employees to try to evade California wage and hour laws including but not limited to, payment of minimum and overtime wages and provision of meal and rest periods even though COMPLAINANT and other misclassified NON-EXEMPT AGGRIEVED EMPLOYEES did not satisfy any test for exemption under California law. For example, based on information and belief, COMPLAINANT did not regularly exercise discretion/independent judgment in her job and typically spent more than fifty percent of her workday performing non-exempt duties such as, but not limited to, answering phone calls, scheduling maintenance workers, among other clerical/ministerial duties.

Based on further information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated with a monthly salary (exclusive of the value of any lodging) that equated to twice the California minimum wage rate. See, Labor Code section 515 and Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment”].

¹ See <https://www.cal-am.com/communities/tara-hills-mobile-manor/> (last visited September 19, 2022)

² See <https://www.cal-am.com/communities/parklane-mobile-estates/> (last visited September 19, 2022)

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGREIVED EMPLOYEES to disclose their salary history; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours

worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

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

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

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and 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.³

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

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.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-

EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

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

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-

compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT was required to monitor her work phone at all times, including during purportedly off-duty meal periods and consistently had her meal periods interrupted with work-related calls/text messages she was required to respond to.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

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

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

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

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, on occasions when COMPLAINANT was required to work shifts of more than ten (10) hours, COMPLAINANT did not receive 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/incentive pay, shift differential pay, commissions and/or piece-rate compensation 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.⁴ 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.

⁴ 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").

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. See applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California 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, COMPLAINANT was consistently forced to cut any rest breaks short or skip them completely due to the nature of the work and/or lack of relief workers available to perform work tasks that had to be done immediately, e.g, responding to inquiries/concerns from tenants/prospective tenants/staff members and/or completing other work tasks.

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, on occasions when COMPLAINANT was required to work shifts of ten (10) hours or more, COMPLAINANT would not receive additional rest period and would remain carrying out duties within the property.

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 was required to continuously monitor her work phone for incoming calls/messages and tend to the needs of property residents and/or complete other work tasks as they would arise, including but not limited to, during any purportedly off-duty rest periods.

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

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses/incentive pay, shift differential pay, commissions and/or piece-rate 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.⁵

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

⁵ 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”).

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.

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

and/or be on call outside of their scheduled shift times without being compensated for all time spent under EMPLOYER's control.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other pre-shift and/or post-shift work off-the-clock work for which they were not compensated. For example, based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo Covid-temperature screenings and/or Covid-testing prior to clocking in to work and/or otherwise outside of their scheduled shift times, which said time spent undergoing EMPLOYER's mandated testing/screening procedures was not recorded nor compensated, resulting in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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.

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

workers, collecting signatures on documents/clerical/ministerial duties, and/or other non-discretionary duties not requiring the exercise of independent judgment to perform.

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

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

Violation of IWC Wage Order Section 10:

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

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

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding 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.⁶

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, commissions and/or piece rate compensation, shift differential pay, bonus/incentive 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.

⁶ 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.⁷

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

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

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

⁷ 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.⁸

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

⁸ 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, EMPLOYER issued wage statements to COMPLAINANT that identify Tara Hills Mobile and/or Parklane Mobile as the EMPLOYER with the following address that is consistent with the principal address for Cal-Am Properties, Inc., as provided to the California Secretary of State: 385 Clinton Street Costa Mesa, California 92626. However, based on information and belief, Parklane Mobile is located at 20401 Soledad Canyon Road, Canyon Country, CA 91351, and Tara Hills Mobile is located at 16401 San Pablo Avenue, San Pablo, CA 94806. Moreover, Cal-Am Properties, Inc. is identified as the employer on most of the documents contained in COMPLAINANT's personnel file, including but not limited to, COMPLAINANT's employment application, EMPLOYER's 2810.5 notice to employee, and letterheads and/or other documents within COMPLAINANT's personnel file that all display the name Cal-Am Properties, Inc. and/or Cal-Am Properties, Inc. logo. Still, other document(s) in COMPLAINANT's personnel file, including but not limited to, employee acknowledgment(s) and/or other policy document(s) identify Pacific Mobile III as the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

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.⁹

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

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

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

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

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not 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).

⁹ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

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

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.¹⁰

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

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

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

¹⁰ (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").

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. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing and/or safety/protective equipment (e.g., face masks).

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.

Based on information and belief, EMPLOYER did not reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for the costs they incurred in having to purchase/maintain their own work tools, including but not limited to, cleaning supplies and/or maintenance supplies and/or other tools they required to perform their job duties.

Based on information and belief, EMPLOYER failed to reimburse COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for the cost of using their home internet/electricity for work purposes, including but not limited to, reviewing training materials, policies and/or other documents as required by EMPLOYER.

Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES incurred expenses associated with being required to use their personal vehicles for work without receiving any/full reimbursement from EMPLOYER for the costs they incurred in connection therewith. For example, based on information and belief, EMPLOYER required COMPLAINANT to use her personal vehicle for business purposes, such as, but not limited to, driving to the bank and/or other commercial establishments for EMPLOYER's business purposes and/or dropping off/picking up items at EMPLOYER's various properties and/or attending training meetings, among other job duties, without reimbursing COMPLAINANT for this personal vehicle use.

Based on information and belief, EMPLOYER did not reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for the cost of undergoing EMPLOYER-mandated 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 testing site.

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

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

Unlawful Inquiries into Salary History

Labor code section 432.3 provides in part "(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment." Based on information and belief, EMPLOYER has a policy and/or practice of unlawfully asking NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to reveal their salary history when applying for employment with EMPLOYER. For example, when COMPLAINANT applied for employment with EMPLOYER, COMPLAINANT was required to fill out an application that requested, among other things, the following information: Name and address of former employer, length of former employment relationship, and the "starting" and "final" "hourly rate/salary" of the former employment relationship. Based on information and belief, EMPLOYER required other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose the same or similar information, in violation of Labor Code section 432.3.

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited

to, unlawful non-solicitation/non-compete agreements and 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. For example, as condition for employment COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to disclose in EMPLOYER'S job application whether applicant was ever convicted of a crime and to provide details if so. Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to consent to background check to verify responses given.

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. For example, as condition for employment COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to disclose in EMPLOYER'S job application whether applicant was ever convicted of a crime and to provide details if so.

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

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

Conclusion

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

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

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

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

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

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

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, reading "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC