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Assigned for All Purposes
Judge Peter Wilson

CX-101

7 Attorneys for Plaintiff BOBBIE DIANNE TAYLOR,
8 on behalf of herself, the State of California,
9 and others similarly situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE**
12

13 BOBBIE DIANNE TAYLOR, on behalf
of herself, the State of California, and
14 others similarly situated and aggrieved,

15 Plaintiff,

17 v.

18 MAYFLOWER GARDENS HEALTH
19 FACILITIES, INC., a California Nonprofit
Corporation; RETIREMENT HOUSING
20 FOUNDATION, a California Nonprofit
Corporation; and DOES 1-100, inclusive,
21

22 Defendants.
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Case No.: 30-2022-01292641-CU-OE-CXC

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

1 Plaintiff BOBBIE DIANNE TAYLOR ("PLAINTIFF" or "PLAINTIFF TAYLOR"), an
2 individual on behalf of herself, the State of California, and all other Aggrieved Employees (defined
3 below), hereby files this Complaint against Defendants MAYFLOWER GARDENS HEALTH
4 FACILITIES, INC., a California Nonprofit Corporation; RETIREMENT HOUSING
5 FOUNDATION, a California Nonprofit Corporation; and DOES 1-100, inclusive, (collectively
6 referred to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges
7 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 and
20 some of the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this this judicial
21 district. Also, see, *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th
22 1069 (venue in a PAGA action is proper in any county where the defendants committed Labor Code
23 violations against some of its employees).

24 **THE PARTIES**

25 4. PLAINTIFF resides in the State of California. PLAINTIFF worked for
26 DEFENDANTS in the State of California as a non-exempt, hourly-paid employee during the
27 relevant period. PLAINTIFF worked for DEFENDANTS as certified nursing aide, certified nursing
28 assistant, CNA and/or similar title from approximately the beginning of November 2021 through

1 approximately March 2022, when PLAINTIFF went on leave. DEFENDANTS assigned
2 PLAINTIFF to work out of one of DEFENDANTS' facilities located in Lancaster, California.

3 5. Defendant MAYFLOWER GARDENS HEALTH FACILITIES, INC. is a California
4 nonprofit corporation that, at all relevant times, was authorized to do business within the State of
5 California and is doing business in the State of California.

6 6. Defendant RETIREMENT HOUSING FOUNDATION is a California nonprofit
7 corporation 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 7. DEFENDANTS own, operate, or otherwise manage a non-profit organization that
10 provides services, including but not limited to, housing and inpatient nursing and rehabilitation
11 services, to sections of the population in need of financial assistance, with
12 locations/facilities/communities located throughout California, including but not limited to, the
13 facility PLAINTIFF was assigned to work by DEFENDANTS in Lancaster, California, during the
14 relevant period. Based on information and belief, Retirement Housing Foundation (RHF) operates
15 at least seventy-five locations/facilities/communities throughout California, including but not
16 limited to, locations in Orange County, California, the location PLAINTIFF worked at in Lancaster,
17 California, operating under the Mayflower Gardens name, and other locations located throughout
18 California.

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

25 9. PLAINTIFF is further informed and believes that, at all relevant times, each
26 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
27 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
28 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of

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

7 **JOINT LIABILITY**

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

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

25 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
26 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
27 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
28 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same

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

10 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
11 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
12 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
13 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
14 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
15 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
16 Employees. For example, DEFENDANTS issued wage statements to PLAINTIFF that identify
17 Defendant Mayflower Gardens Health Facilities, Inc. and/or "Mayflower Gardens Health Fac., Inc"
18 as the legal name of the employer. However, documents in PLAINTIFF's personnel file, including
19 but not limited to, PLAINTIFF's employment application, harassment, discrimination, and
20 retaliation policies/acknowledgments, among other employment policy documents/agreements, as
21 well as various letterheads contained in PLAINTIFF's personnel file all identify Defendant
22 "Retirement Housing Foundation" as the employer. Moreover, DEFENDANTS, and each of them,
23 share the same California principal address as provided to the California Secretary of State.

24 14. As such, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies,
25 practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices,
26 meal and rest periods, reimbursement of business expenses and other working conditions that were
27 distributed to, and/or applied to PLAINTIFF and the Aggrieved Employees across all
28 DEFENDANTS' California locations/facilities, and further that DEFENDANTS uniformly

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

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

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

19 **PAGA ALLEGATIONS**

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

23 All current and former non-exempt employees employed by the DEFENDANTS at any
24 facility/location owned, operated and/or managed by DEFENDANTS in California at any
25 time from one year plus 65 days from filing of the initial Complaint through the present
26 ("PAGA Period").

27 18. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
28 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations

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

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

10 19. On September 13, 2022, PLAINTIFF TAYLOR, through counsel, gave written
11 notice by online filing with the California Labor and Workforce Development Agency ("LWDA")
12 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
13 allegations alleged in this Complaint ("PAGA Notice"). The LWDA assigned PLAINTIFF the
14 following case number: LWDA-CM-907613-22. On September 14, 2022, PLAINTIFF, through her
15 counsel, gave written amended notice by online filing with the LWDA ("Amended PAGA Notice"),
16 to update information regarding the location/address where client worked. The PAGA Notice and
17 Amended PAGA Notice were sent to DEFENDANTS via certified mail.

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

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

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

1 **FACTUAL ALLEGATIONS**

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

5 24. PLAINTIFF worked for DEFENDANTS as a non-exempt employee from in or
6 around November 2021 until March 2022, when PLAINTIFF went on leave. PLAINTIFF worked
7 for DEFENDANTS as a certified nursing aide, certified nursing assistant, CNA and/or similar title
8 from approximately the beginning of November 2021 through approximately March 2022, when
9 PLAINTIFF went on leave. DEFENDANTS assigned PLAINTIFF to work out of one of
10 DEFENDANTS' facilities located in Lancaster, California, that operates under the Mayflower
11 Gardens name.

12 25. PLAINTIFF regularly worked at least eight (8) to sixteen (16) hours per day, at least
13 (5) days per week. DEFENDANTS compensated PLAINTIFF with an hourly rate for time counted
14 by DEFENDANTS as hours worked.

15 26. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
16 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
17 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
18 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
19 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
20 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
21 below.

22 27. Based on information and belief, Aggrieved Employees were not paid for all hours
23 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
24 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.
25 Based on information and belief, Aggrieved Employees were not paid for all hours worked due to
26 DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of
27 actual time worked, and/or mandated off-the clock work policies and/or practices. For example,
28 DEFENDANTS' excessive expectation that PLAINTIFF and other Aggrieved Employees tend to

1 the needs of the patients in the facility at all costs resulted in DEFENDANTS requiring PLAINTIFF
2 and other Aggrieved Employees to deduct 30 minutes of time to appear as if they took their meal
3 periods. But such deducted time work expended by PLAINTIFF and other Aggrieved Employees
4 qualified as “hours worked” within the meaning of the California Labor Code and IWC Wage
5 Orders. DEFENDANTS was obligated to pay wages for all such “hours worked” but failed to do
6 so.

7 28. Additionally, prior to clocking in for the start of their shifts each day, PLAINTIFF
8 and other Aggrieved Employees were required to undergo a COVID-related temperature check as
9 well as answer COVID-related questions and/or fill in responses to a written COVID-related
10 questionnaire, but this time spent under employer control undergoing DEFENDANTS’ mandated
11 COVID-temperature screening and/or other health/security screenings was not recorded and not
12 compensated, resulting in at least several minutes of pre-shift off-the-clock work each work day and
13 unpaid minimum and overtime wages to PLAINTIFF and other Aggrieved Employees.

14 29. Moreover, PLAINTIFF and other Aggrieved Employees were required to perform
15 other off-the-clock work for which they were not compensated. For example, PLAINTIFF and other
16 nurses were required to show up to work each day prior to the start of their scheduled shift times to
17 perform a walk through, receive a debriefing from the previous shift worker, administer medications
18 and/or water to patients and or complete other work tasks prior to clocking in for the start of their
19 shifts, resulting in an average of thirty minutes of off-the-clock work each work day and the
20 significant underpayment of minimum and overtime wages owed to PLAINTIFF and other
21 Aggrieved Employees.

22 30. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
23 also required to complete off-the-clock work outside of scheduled shifts and/or during unpaid meal
24 periods due to work-related phone calls and/or messages they received to their personal
25 phones/mobile devices and were required to respond to, including but not limited to,
26 communications from patients and/or supervisors, resulting in significant off-the-clock work.

27 31. Based on information and belief, DEFENDANTS failed to pay Aggrieved
28 Employees for time they were required to spend completing orientation, policy questionnaires,

1 and/or time spent completing the onboarding process including but not limited to reviewing various
2 documents and policies provided by DEFENDANTS. Based on information and belief, this work time
3 was completed off-the-clock and was not compensated.

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

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

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

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

24 36. Based on information and belief, DEFENDANTS sometimes paid PLAINTIFF and
25 other Aggrieved Employees multiple rates of base pay in one workweek but failed to incorporate all
26 multiple rates of base pay into the regular rate of pay for purposes of calculating the owed overtime
27 rate. For example, on information and belief, PLAINTIFF earned multiple base pay rates during the
28 same workweek, yet, DEFENDANTS failed to incorporate all/both base pay rates into the regular

1 rate of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and
2 underpayment of overtime wages owed to PLAINTIFF. Based on information and belief,
3 DEFENDANTS similarly failed to incorporate multiple base rates of pay earned in a workweek by
4 other Aggrieved Employees into the regular rate of pay used to calculate the owed overtime rate(s),
5 resulting in unpaid wages to Aggrieved Employees.

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

11 38. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
12 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
13 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
14 (30) minute first (and second) meal periods. Based on information and belief, Aggrieved Employees
15 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
16 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
17 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
18 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
19 completely. For example, at least three (3) times a week, PLAINTIFF would not be able to take a
20 timely, duty-free meal period. This would be due to PLAINTIFF having to tend to her assigned
21 patients' needs. DEFENDANTS had no policy or procedure that would have allowed PLAINTIFF
22 to be relieved in order to observe meal periods. Despite PLAINTIFF not being able to observe meal
23 periods, DEFENDANTS required PLAINTIFF to clock out to show a meal period was observed.
24 However, such time worked by PLAINTIFF was not compensated one additional hour of pay at
25 PLAINTIFF's regular rate of compensation for each workday that a meal period was not properly
26 provided. Moreover, due to PLAINTIFF'S need to tend to her assigned patients, PLAINTIFF's meal
27 periods were delayed past the fifth hour of work. Despite DEFENDANTS' knowledge of
28 PLAINTIFF's inability to observe meal periods on timely basis, PLAINTIFF was not compensated

1 one additional hour of pay at PLAINTIFF'S regular rate of compensation for each workday that was
2 not properly provided.

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

8 40. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
10 during unpaid meal periods.

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

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

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

25 44. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
26 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
27 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
28 did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

22 49. PLAINTIFF and other Aggrieved Employees were not adequately informed,
23 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
24 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
25 the taking of duty-free rest periods.

26 50. Based on information and belief, DEFENDANTS did not have a have a compliant
27 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
28 practice. For example, per DEFENDANTS' unlawful rest period policy and practice, PLAINTIFF

1 and other Aggrieved Employees were provided with only a single rest period per shift, regardless
2 of number of hours worked, and the single purported rest period was typically worked through
3 and/or otherwise noncompliant with California rest period law. Moreover, DEFENDANTS had no
4 policy as to the timing of rest periods.

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

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

12 53. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
14 DEFENDANTS' control during rest periods. For example, based on information and belief,
15 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to remain on the premises
16 and tethered to their worksites during purportedly off-duty rest periods.

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

20 55. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
21 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in
22 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
23 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
24 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
25 shift differential pay, and/or other non-discretionary compensation into the regular rate of
26 compensation for purposes of calculating the owed rest period premium.

27 56. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
28 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied

1 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
2 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
3 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
4 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee.

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

16 58. Based on information and belief, wage statements issued by DEFENDANTS failed
17 to list all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
19 For example, based on information and belief, DEFENDANTS' wage statements issued to
20 PLAINTIFF and other Aggrieved Employees do not provide an accurate overtime rate because
21 instead of multiplying the regular rate of pay by one and one-half, the wage statements provide at
22 least two separate overtime rate categories with each providing an inaccurate overtime rate because
23 they do not list an overtime rate of pay of 1.5 times the regular rate of pay and instead provide a
24 "Overtime Premium Pay" rate that is half and/or slightly more than half the base rate. As such,
25 PLAINTIFF and other Aggrieved Employees are forced to perform extensive calculation using
26 outside resources to determine what their pay rate was for each corresponding hour worked. See,
27 e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein,
28 DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned

1 during the pay period, including but not limited to, non-discretionary bonus/incentive pay and/or
2 shift differential pay and/or other non-discretionary compensation and/or multiple base rates of pay
3 into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for
4 each hour of overtime worked by PLAINTIFF and other Aggrieved Employees.

5 59. As described herein, based on information and belief, DEFENDANTS also failed to
6 incorporate all forms of non-discretionary compensation earned during the pay period (including
7 but not limited to, shift differential pay and/or non-discretionary bonus/incentive pay and/or other
8 non-discretionary compensation) into the overtime pay rate calculation, and as such, failed to display
9 the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other Aggrieved
10 Employees.

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

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

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

22 63. Upon separation of employment, Aggrieved Employees' final paychecks were not
23 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
24 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
25 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
26 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
27 accrued rates.

28 64. These violations subject DEFENDANTS to civil penalties under Labor Code section

1 203, 210, and/or 256.

2 **65. Unreimbursed Business Expenses.** Based on information and belief,
3 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
4 direct consequence of the performance of their job duties without providing reimbursement, in
5 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
6 Employees were improperly required to provide and maintain work tools that are supposed to be the
7 responsibility of the employer.

8 **66.** Based on information and belief, DEFENDANTS shifted its costs of doing business
9 onto Aggrieved Employees by requiring them to pay for its business expenses, including but not
10 limited to, uniforms and/or the use of Aggrieved Employees' personal mobile phone and data usage
11 for work related purposes including but not limited to receiving and responding to work related
12 messages and/or phone calls. For example, at times, such as but not limited to, when the front desk
13 was busy, patients would call and/or send messages to PLAINTIFF on her personal cell phone that
14 PLAINTIFF was required to respond to, however, PLAINTIFF was not reimbursed by
15 DEFENDANTS in any way for the use of her personal cell phone. Based on information and belief,
16 Aggrieved Employees were not reimbursed for the cost of using their personal phone for work
17 related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing.

18 **67.** Based on information and belief, DEFENDANTS required PLAINTIFF and other
19 Aggrieved Employees to use their personal vehicles for work without reimbursing them for the
20 personal vehicle expenses they incurred in connection therewith. For example, at times, PLAINTIFF
21 was required to use her personal vehicle for work-related errands at the direction of her supervisor,
22 such as, but not limited to, driving to purchase food for patients, supervisors and/or coworkers. As
23 such, DEFENDANTS failed and continues to fail to compensate for vehicle-related expenses at the
24 Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period.

25 **68.** Based on information and belief, PLAINTIFF and other Aggrieved Employees were
26 required to supply, purchase and/or maintain their own equipment and/or tools for work purposes.
27 For example, PLAINTIFF was required to purchase her own stethoscope, thermometer and/or pulse
28 checker for use at work but was not reimbursed by DEFENDANTS for these business expenses.

1 Based on information and belief, other Aggrieved Employees were also required to purchase and/or
2 maintain their own equipment/tools for use at work without reimbursement from DEFENDANTS.

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

8 70. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
9 for all reasonable expenses associated with carrying out their duties required that Aggrieved
10 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
11 2802.

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

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

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

28 74. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records

1 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
2 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
3 were entitled to the maximum number of hours accruable.

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

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

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

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

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

26 80. DEFENDANTS have failed and continue to fail to keep accurate and complete
27 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
28 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and

1 employer control during unpaid meal periods, failure to record the true start and end times of meal
2 periods, shift start times and shift end times, and other mandated off-the-clock work policies and
3 practices described herein.

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

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

12 83. **Failure to Provide Suitable Resting Facilities:** Per section 13 of all applicable IWC
13 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
14 Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the
15 toilet rooms and shall be available to employees during work hours."

16 84. Based on information and belief, DEFENDANTS failed to provide Aggrieved
17 Employees with suitable resting facilities during their hours of work, particularly during meal and/or
18 rest periods. Moreover, DEFENDANTS did not inform Aggrieved Employees of their right to
19 suitable resting facilities under California law.

20 85. Based on information and belief, DEFENDANTS could have provided Aggrieved
21 Employees with a suitable resting facility (e.g., an adequate breakroom) within the work facility(ies)
22 with reasonable or no modification, but instead denied and continues to deny, employees with
23 suitable areas to rest.

24 86. DEFENDANTS' failure to provide suitable resting facilities to Aggrieved
25 Employees violated and continues to violate all applicable Wage Orders, section 13(B) and the
26 California Labor Code, including but not limited to section 1198. DEFENDANTS' failure to provide
27 suitable resting facilities to PLAINTIFF and other Aggrieved Employees violated and continues to
28 violate the applicable Wage Order, and Labor Code section 1198.

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

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

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

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

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

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

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

24 92. DEFENDANTS' Aggrieved Employees worked in various positions, including but
25 not limited to, certified nursing aides, certified nursing assistants, CNAs and/or other similar
26 position(s)/title(s). The nature of PLAINTIFF's and other Aggrieved Employees' work reasonably
27 permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable
28 proximity to Aggrieved Employees' work areas in violation of section 14(A-B) of all applicable

1 Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties
2 under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC
3 Wage Order provision, for each Aggrieved Employee, results in a separate civil penalty.

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

9 94. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
10 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, seating,
11 suitable resting facilities, and unreimbursed business expenses result in separate violations of
12 sections 1198 and 1199.

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

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

26 97. **Unlawful Agreements-Unlawful Criminal and Financial Background Checks.**
27 Based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved
28 Employees to agree in writing to unlawful conditions of employment, such as, but not limited to,

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

13 **FIRST CAUSE OF ACTION**

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

15 **2698, ET SEQ.**

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

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

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

25 100. Employers must also provide employees with a second duty-free, uninterrupted
26 thirty-minute meal period when an employee works more than (10) hours in a workday, and it must
27 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
28 under the following circumstances: (1) if an employee’s total work period in a day is over five (5)

1 hours but no more than six (6) hours, the required meal period may be waived by mutual consent of
2 the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
3 hours but no more than twelve (12) hours, the required second meal period may be waived by mutual
4 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

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

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

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

28 104. Based on information and belief, DEFENDANTS rounded the start and end times of

1 employees' meal periods and/or automatically deducted thirty minutes per shift despite having
2 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
3 receive compliant meal periods.

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

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

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

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

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

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

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

25 112. California law also provides that employees in California must be paid overtime,
26 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
27 week or 8 hours per day. See Labor Code section 510 and the applicable Wage Order section 3.
28 Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked

1 beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the
2 seventh consecutive day of work in a work week. Ibid.

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

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

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

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

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

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

26 118. Based on information and belief, wage statements issued by DEFENDANTS failed
27 to list all applicable hourly rates in effect during the pay period and the corresponding number of
28 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

1 For example, based on information and belief, DEFENDANTS' wage statements issued to
2 PLAINTIFF and other Aggrieved Employees do not provide an accurate overtime rate because
3 instead of multiplying the regular rate of pay by one and one-half, the wage statements provide at
4 least two separate overtime rate categories with each providing an inaccurate overtime rate because
5 they do not list an overtime rate of pay of 1.5 times the regular rate of pay and instead provide a
6 "Overtime Premium Pay" rate that is half and/or slightly more than half the base rate. As such,
7 PLAINTIFF and other Aggrieved Employees are forced to perform extensive calculation using
8 outside resources to determine what their pay rate was for each corresponding hour worked. See,
9 e.g., McKenzie v. Fedex, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein,
10 DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned
11 during the pay period, including but not limited to, non-discretionary bonus/incentive pay and/or
12 shift differential pay and/or other non-discretionary compensation and/or multiple base rates of pay
13 into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for
14 each hour of overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

28 122. Separately, and independent of the above allegation, based on information and belief,

1 DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees further violate
2 Labor Code section 226(a), by failing to list the correct name and address of the legal entity that is
3 the employer.

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

7 124. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave
8 laws including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to
9 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 (by
11 virtue of DEFENDANTS' meal period auto-deduction and time rounding practices and off-the-
12 clock work described herein), and/or failure to incorporate all forms of non-discretionary
13 remuneration into the sick pay calculation.

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

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

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

28

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

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

6 129. These practices violated California's sick leave laws, Labor Code section 245, et
7 seq.

8 130. On information and belief, PLAINTIFF alleges that all of these practices were
9 experienced and continue to be experienced by other Aggrieved Employees.

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

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

19 133. **Failure to Pay Vested Vacation/Paid Time Off:** California Labor Code section
20 227.3 provides that when an employer policy provides for paid vacations and/or paid time off,
21 and an employee is terminated without having taken off his, her, or their vested vacation time,
22 all vested vacation shall be paid to the employee as wages at the employee's final rate in
23 accordance with such contract of employment or employer policy respecting eligibility or time
24 served and that there shall be no forfeiture of vested vacation time or paid time off upon
25 termination. Based on information and belief, DEFENDANTS had and continue to have a
26 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
27 vacation/paid time off during their employment and/or failing to pay all vested, accrued paid
28 time off to Aggrieved Employees upon separation of employment, in violation of California

1 law, including but not limited to, Labor Code section 227.3.

2 134. **Record-Keeping Violations.** California Labor Code sections 226 and 1174
3 require DEFENDANTS to keep "accurate and complete" payroll records showing, among other
4 things, the hours worked daily by all non-exempt employees. Section 7 of all applicable IWC
5 Wage Orders similarly requires employer to keep time records showing, inter alia, when the
6 employees begin and end each work period and reflecting the true start and end times during
7 which all owed meal periods are provided each day. At all relevant times, DEFENDANTS have
8 failed, and continue to fail, to keep the required time records, as DEFENDANTS have failed to
9 record the true start and end times of PLAINTIFF's and other Aggrieved Employees' workdays
10 and failed to record PLAINTIFF's and other Aggrieved Employees' meal periods.
11 DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and
12 the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all
13 applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under
14 the Labor Code, including without limitation sections 1174.5 and 2699. Each violation of each
15 Labor Code section and Wage Order provision, for each aggrieved employee, results in a
16 separate civil penalty.

17 135. **Unreimbursed Business Expenses.** California law requires employers to
18 indemnify their employees for all necessary expenditures incurred by the employee in direct
19 consequence of the discharge of their duties or of their obedience to the directions of the
20 DEFENDANTS. See Cal. Lab. Code section 2802(a) and all applicable Wage Orders, section
21 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses'
22 shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the
23 employee enforcing the rights granted by this section." Cal. Lab. Code section 2802(c).
24 Moreover, "any contract or agreement, express or implied, made by any employee to waive the
25 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
26 employee or his personal representative of any right or remedy to which he is entitled to under
27 the laws of this State." See Cal. Lab. Code section 2804. Among other things, under California
28 law, when tools or equipment are required by the employer or are necessary to the performance

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

10 136. On information and belief, at all relevant times hereto, DEFENDANTS shifted
11 their costs of doing business onto Aggrieved Employees by requiring them to pay for its
12 business expenses, including but not limited to, uniforms and/or the use of Aggrieved
13 Employees' personal mobile phone and data usage for work related purposes including but not
14 limited to receiving and responding to work related messages and/or phone calls.

15 137. DEFENDANTS also failed to reimburse Aggrieved Employees for the cost of
16 purchasing their own work tools (e.g., stethoscopes, thermometers and/or pulse checkers). For
17 example, PLAINTIFF was required to purchase her own stethoscope, thermometer, pulse
18 checker and/or other hand tools necessary to perform her job duties. PLAINTIFF was not
19 reimbursed for the cost of purchasing tools necessary to complete her job duties. Based on
20 information and belief, DEFENDANTS have a policy and/or practice of failing to reimburse
21 Aggrieved Employees for the cost of purchasing work tools.

22 138. Based on further information and belief, Aggrieved Employees incurred
23 expenses associated with being required to use their personal vehicles for work without
24 receiving reimbursement and/or full reimbursement from DEFENDANTS for the costs they
25 incurred in connection therewith. Based on information and belief, other Aggrieved Employees
26 were/are required to use their personal vehicles for work purposes without receiving any
27 reimbursement from DEFENDANTS and /or full reimbursement from DEFENDANTS,
28 including but not limited to, reimbursement at the applicable legally mandated Internal Revenue

1 Service (IRS) per mile compensation rate.

2 139. DEFENDANTS' failure to provide Aggrieved Employees with full
3 reimbursement for all reasonable expenses associated with carrying out their duties required
4 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation
5 of Labor Code section 2802 and section 9 of all applicable IWC Wage orders. Accordingly,
6 this constitutes a PAGA violation based on violations of Labor Code section 2802 and section
7 9 of the applicable wage order.

8 140. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
9 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
10 applicable Wage Order provides: "Suitable resting facilities shall be provided in an area separate
11 from the toilet rooms and shall be available to employees during work hours."

12 141. As explained above, DEFENDANTS did not provide PLAINTIFF and other
13 Aggrieved Employees with suitable resting facilities during their hours of work, particularly during
14 meal and/or rest periods. As such, DEFENDANTS violated and continue to violate the applicable
15 Wage Order, including but not limited to, IWC Wage Order 5-2001, section 13(B) and the California
16 Labor Code, including but not limited to section 1198.

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

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

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

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

28 144. Suitable seating is one of the worker protections covered by California's Wage

1 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
2 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
3 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

12 147. DEFENDANTS' Aggrieved Employees worked in various positions, including but
13 not limited to, certified nursing aides, certified nursing assistants, CNAs and/or other similar
14 position(s)/title(s). The nature of PLAINTIFF's and other Aggrieved Employees' work reasonably
15 permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable
16 proximity to Aggrieved Employees' work areas in violation of section 14(A-B) of all applicable
17 Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties
18 under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC
19 Wage Order provision, for each Aggrieved Employee, results in a separate civil penalty.

20 148. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
21 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
22 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
23 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
24 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
25 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, seating
26 and resting facilities, and unreimbursed business expenses, result in separate violations of sections
27 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1
28 and 2699.

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

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

16 **151. Untimely Payment of Final Wages.** DEFENDANTS failed to timely Aggrieved
17 Employees all wages that were due and owing upon termination or resignation. Labor Code sections
18 201 and 202, together require employers to pay all wages immediately upon discharge and/or within
19 72 hours of an employees' resignation. Upon separation of employment, Aggrieved Employees'
20 final paychecks were not timely provided. Based on information and belief, DEFENDANTS did not
21 pay final wages in accordance with the timing requirements set forth in Labor Code sections 201
22 and 202. Based on information and belief, DEFENDANTS provide final wages to Aggrieved
23 Employees on the regular pay day without regard to the timing requirements of Labor Code sections
24 201-202.

25 **152.** Moreover, upon separation of employment, Aggrieved Employees' final paychecks,
26 once provided, did not include all wages owed as they were devoid of, including but not limited to,
27 all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed paid time
28 off wages at the properly accrued rates. DEFENDANTS also willfully failed to timely pay all wages

1 upon separation of employment because it was not paying sick pay at the appropriate rates due to,
2 including but not limited to, failing to incorporate all non-discretionary compensation into the sick
3 pay calculation.

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

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

1 failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way
2 by which the individual could request a copy of the report, and failing to properly obtain
3 authorization or consent to such a background check, and thus was an unlawful background check.
4 Based on information and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved
5 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
6 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
7 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
8 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

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

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

27 159. Under the provisions of PAGA and the above-mentioned Labor Code sections,
28 including but not limited to, Labor Code sections 201, 202, 203, 210, 216, 221-223, 225.5, 226,

1 226.3, 226.7, 227.3, 245-248.5, 256, 432, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1024.5, 1174,
2 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders
3 as well as all interpretations of these laws by California Courts and administrative bodies, as well
4 as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
5 penalties:

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

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

17 **PRAYER FOR RELIEF**

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

- 20 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
21 25% payable to Aggrieved Employees);
22 2. For reasonable attorney's fees and costs of suit; and
23 3. For such other and further relief that the Court deems just and proper.

24 Dated: November 21, 2022

CROSNER LEGAL, PC

25 By: _____

26 Michael R. Crosner, Esq.
27 Zachary M. Crosner, Esq.
28 Jamie Serb, Esq.
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