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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15

16 **IN AND FOR THE COUNTY OF SANTA CLARA**

17

18 JENNIFER WONG, on behalf of the State of
19 California, as a private attorney general,

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22 Plaintiff,

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24 vs.

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27 NURSE LOGISTICS, INC., a California
28 Corporation; and DOES 1 through 50,
inclusive,

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31 Defendants.

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1/20/2023 5:22 PM

Clerk of Court

Superior Court of CA,

County of Santa Clara

23CV410163

Reviewed By: R. Walker

Case No. **23CV410163**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2750.3 *et seq.*,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

1 Plaintiff Jennifer Wong (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Nurse Logistics, Inc. (referred
8 to as “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699**. To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 4. Defendant Nurse Logistics, Inc. (“DEFENDANT”) in order to service their
23 customers, hires workers to aid DEFENDANT in providing healthcare services. The cost, as
24 proscribed by law, of the personnel hired to work for DEFENDANT, includes not only the pay
25 and overtime pay of these employees but the cost of the employer's share of tax payments to the
26 federal and state governments for income taxes, social security taxes, medicare insurance,
27 unemployment insurance and payments for workers' compensation insurance ("Business Related
28 Expenses"). To avoid the payment of these legally proscribed Business Related Expenses to the

1 fullest extent possible, DEFENDANT devised a scheme to place the responsibility for the
2 payment of these costs and expenses of DEFENDANT on the shoulders of PLAINTIFF and
3 other Nurses. As employer, DEFENDANT is legally responsible for the payment of all these
4 Business Related Expenses.

5 6 **THE PARTIES**

7 5. Nurse Logistics, Inc. (“DEFENDANT”) is a corporation that at all relevant times
8 mentioned herein conducted and continues to conduct substantial and regular business in the
9 State of California.

10 6. DEFENDANT operates a business that connects individuals looking for
11 caregiving services on demand.

12 7. PLAINTIFF was employed by DEFENDANT as a Registered Nurse from April
13 of 2020 to June of 2022 and was classified by DEFENDANT as an independent contractor
14 during her entire employment with DEFENDANT.

15 8. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person
16 or employer to engage in . . . [w]illful misclassification of an individual as an independent
17 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less
18 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
19 each violation, in addition to any other penalties or fines permitted by law.” It is further
20 provided that, in the event that an employer is found to have engaged in “a pattern or practice
21 of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and
22 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
23 penalties or fines permitted by law.” Cal. Labor Code § 226.8.

24 9. Here, DEFENDANT has willfully misclassified PLAINTIFF, Certified Nursing
25 Assistants, Licensed Vocational Nurses, Registered Nurses, and other similarly situated persons
26 with similar job titles collectively referred herein as “Nurses” or “Nurse” as described in Cal.
27 Labor Code § 226.8 and Labor Code Section 2750.3 *et seq.*, and further, that DEFENDANT has
28 engaged in a “pattern or practice” of such violations as contemplated by the California Labor

1 Code.

2 10. Upon hire, the position of a Nurse was represented by DEFENDANT to
3 PLAINTIFF and the other Nurses as an independent contractor position capable of paying an
4 hourly rate for time worked for DEFENDANT. PLAINTIFF and other Nurses were paid an
5 hourly rate to perform services on DEFENDANT's behalf. PLAINTIFF and other Nurses were
6 not compensated overtime wages for any of their time spent working in excess of eight (8) hours
7 in a workday and/or forty (40) hours in a workweek.

8 11. To perform their job duties, the PLAINTIFF and the other Nurses performed work
9 subject to the control of DEFENDANT in that DEFENDANT had the authority to exercise
10 complete control over the work performed and the manner and means in which the work was
11 performed. DEFENDANT provided the customers and DEFENDANT provided the instructions
12 as to how to perform their services.

13 12. California Labor Code § 3357 defines "employee" as "every person in the service
14 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
15 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
16 Code's presumption that workers are employees, the California Supreme Court has determined
17 the most significant factor to be considered in distinguishing an independent contractor from
18 an employee is whether the *employer or principal has control or the right to control the work*
19 *both as to the work performed and the manner and means in which the work is performed.*
20 DEFENDANT heavily controlled both the work performed and the manner and means in which
21 PLAINTIFF and the other Nurses performed their work in that:

22 (a) PLAINTIFF and other Nurses were not involved in a distinct business, but
23 instead were provided with instructions as to how to perform their work and the manner and
24 means in which the work was to be performed by means of DEFENDANT's manuals and
25 written instructions;

26 (b) PLAINTIFF and other Nurses were continuously provided with training
27 and supervision, including following DEFENDANT's company documents and received
28 training from DEFENDANT as to how and in what way to perform services;

1 (c) DEFENDANT set the requirements as to what policies and procedures all
2 of the Nurses were to follow;

3 (d) PLAINTIFF and other Nurses had no opportunity for profit or loss because
4 DEFENDANT only paid these employees based on the hours they worked for DEFENDANT
5 and DEFENDANT controlled and assigned the weekly schedules PLAINTIFF and other Nurses
6 were required to work. DEFENDANT also controlled which Nurses would receive a particular
7 medical assignment;

8 (e) PLAINTIFF and other Nurses performed healthcare services which is part
9 of DEFENDANT's principal business and is closely integrated with and essential to the
10 employer's business of providing healthcare services to their customers;

11 (f) PLAINTIFF and other Nurses performed the work themselves and did not
12 hire others to perform their work for them;

13 (g) PLAINTIFF and other Nurses did not have the authority to make
14 employment-related personnel decisions;

15 (h) PLAINTIFF and other Nurses performed their work in a particular order
16 and sequence in accordance with DEFENDANT's company policy; and,

17 (i) DEFENDANT had the "right" to control every critical aspect of
18 DEFENDANT's daily services in that DEFENDANT provided step-by-step instructions to
19 PLAINTIFF and other Nurses as to the entire process of assisting clients. PLAINTIFF and
20 other Nurses provided services ONLY for DEFENDANT's customers, which DEFENDANT
21 controlled via the company's technology.

22 13. As a result, stripped of all the legal fictions and artificial barriers to an honest
23 classification of the relationship between PLAINTIFF and all the other Nurses on the one hand,
24 and DEFENDANT on the other hand, PLAINTIFF and all the other Nurses are and were
25 employees of DEFENDANT and not independent contractors of DEFENDANT and should
26 therefore be properly classified as non-exempt, hourly employees.

27 14. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, brings this Representative Action on behalf of the State of California with respect to herself
2 and all individuals who worked for DEFENDANT in California as a Nurse and who were
3 classified as independent contractors ("AGGRIEVED EMPLOYEES") during the time period
4 of October 27, 2021 until a date as determined by the Court (the "PAGA PERIOD").

5
6 15. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES
7 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
8 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
9 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210,
10 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2750.3 *et seq.*, 2802,
11 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
12 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
13 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

14 16. As a matter of company policy, practice and procedure, DEFENDANT has
15 unlawfully, unfairly and/or deceptively classified every AGGRIEVED EMPLOYEE as
16 "independent contractors" in order to unlawfully avoid compliance with all applicable
17 federal and state laws that require payment for all time worked, business expenses, and the
18 employer's share of payroll taxes and mandatory insurance. As a result of the scheme to
19 defraud the federal and state governments and the AGGRIEVED EMPLOYEES,
20 PLAINTIFF and the AGGRIEVED EMPLOYEES were underpaid throughout their
21 employment with DEFENDANT. The true names and capacities, whether individual,
22 corporate, associate or otherwise of the Defendants sued here as DOES 1 through 50,
23 inclusive, are presently unknown to PLAINTIFF who therefore sue these Defendants by
24 such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF is informed and
25 believes, and based thereon, allege that each of the Defendants designated herein is legally
26 responsible in some manner for the unlawful acts referred to herein. PLAINTIFF will seek
27 leave of Court to amend this Complaint to reflect the true names and capacities of the
28 Defendants when they have been ascertained and become known.

17. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to the PLAINTIFF and the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

18. The finite set of tasks required of PLAINTIFF and the AGGRIEVED EMPLOYEES as defined by DEFENDANT was executed by them through the performance of non-exempt labor.

19. Although PLAINTIFF and the AGGRIEVED EMPLOYEES performed non-exempt labor subject to DEFENDANT's complete control over the manner and means of performance, DEFENDANT instituted a blanket classification policy, practice and procedure by which all of these AGGRIEVED EMPLOYEES were classified as "independent contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and reimbursement for business related expenses. By reason of this uniform misclassification, the AGGRIEVED EMPLOYEES were also required to pay DEFENDANT's share of payroll taxes and mandatory insurance premiums. As a result of this uniform misclassification practice, policy and procedure applicable to PLAINTIFF and the AGGRIEVED EMPLOYEES who performed this work for DEFENDANT, DEFENDANT engaged in a company-wide policy, practice and procedure which uniformly failed to properly classify PLAINTIFF and the AGGRIEVED EMPLOYEES as employees and thereby failed to pay them overtime wages for overtime worked, reimbursement of business related expenses, failed to provide them with meal and rest breaks, and failed to reimburse these employees for the employer's share of payroll taxes and mandatory insurance. The proper classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation

1 to meet this burden, DEFENDANT violated the California Labor Code and regulations
2 promulgated thereunder as herein alleged. DEFENDANT did not have in place a policy,
3 practice or procedure that provided meal and/or rest breaks to PLAINTIFF and the
4 AGGRIEVED EMPLOYEES as evidenced by DEFENDANT's business records which contain
5 no record of these breaks.

6 20. DEFENDANT, as a matter of law, has the burden of proving that employees are
7 properly classified and that DEFENDANT otherwise complies with applicable laws.
8 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
9 AGGRIEVED EMPLOYEES as independent contractors.

10 21. PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were uniformly
11 classified and treated by DEFENDANT as independent contractors at the time of hire and
12 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFF and
13 the AGGRIEVED EMPLOYEES are properly classified under the applicable Industrial Welfare
14 Commission Wage Order and Cal. Lab. Code § 510 as exempt from applicable labor laws.
15 Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and the
16 AGGRIEVED EMPLOYEES in compliance with California labor laws, DEFENDANT's
17 practices violated and continue to violate California law. In addition, DEFENDANT acted
18 deceptively by falsely and fraudulently classifying PLAINTIFF and each AGGRIEVED
19 EMPLOYEE as independent contractors when DEFENDANT knew or should have known that
20 this classification was false and not based on known facts.

21 22. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
22 EMPLOYEES were from time to time unable to take off duty meal breaks and were not fully
23 relieved of duty for meal periods. PLAINTIFF and the AGGRIEVED EMPLOYEES were
24 required from time to time to perform work as ordered by DEFENDANT for more than five (5)
25 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed
26 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with a second off-duty meal
27 period from time to time in which these employees were required by DEFENDANT to work ten
28 (10) hours of work. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore forfeited meal

1 breaks without additional compensation and in accordance with DEFENDANT's strict
2 corporate policy and practice.

3 23. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
4 were also required from time to time to work in excess of four (4) hours without being provided
5 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
6 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
7 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
8 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
9 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
10 PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with one hour wages
11 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
12 EMPLOYEES were from time to time denied their proper rest periods by DEFENDANT and
13 DEFENDANT's managers.

14 24. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
15 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
16 PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging their
17 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
18 required to indemnify employees for all expenses incurred in the course and scope of their
19 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
20 her employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
22 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful."

24 25. In the course of their employment PLAINTIFF and the AGGRIEVED
25 EMPLOYEES as a business expense, are required by DEFENDANT to use personal cellular
26 phones and their personal vehicles as a result of and in furtherance of their job duties as
27 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
28 cost associated with the use of the personal cellular phones and personal vehicles for

1 DEFENDANT's benefit. In order to work as a Nurse for DEFENDANT, PLAINTIFF and the
2 AGGRIEVED EMPLOYEES are required to communicate with DEFENDANT and as such it
3 is mandatory to have a cell phone that is compatible to remain in constant contact with
4 DEFENDANT and DEFENDANT's customers. As a result, in the course of their employment
5 with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed
6 business expenses which include, but are not limited to, costs related to the use of their personal
7 cellular phones and personal vehicle expenses all on behalf of and for the benefit of
8 DEFENDANT.

9 26. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
10 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
11 show, among other things, the correct amount of time worked, including, work performed in
12 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and correct
13 amount of net and/or gross wages earned. Cal. Lab. Code § 226 provides that every employer
14 shall furnish each of his or her employees with an accurate itemized wage statement in writing
15 showing, among other things, gross wages earned and all applicable hourly rates in effect during
16 the pay period and the corresponding amount of time worked at each hourly rate. As a result,
17 DEFENDANT provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
18 statements which violated Cal. Lab. Code § 226.

19 27. By reason of this conduct applicable to PLAINTIFF and all the AGGRIEVED
20 EMPLOYEES, DEFENDANT engaged in a company-wide policy, practice and procedure
21 which failed to correctly classify PLAINTIFF and the AGGRIEVED EMPLOYEES as
22 employees. The proper classification of these employees is DEFENDANT's burden. As a result
23 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
24 failed to pay all required overtime compensation for work performed by PLAINTIFF and the
25 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
26 promulgated thereunder as herein alleged.

27 28. All of the conduct and violations alleged herein occurred during the PAGA
28

1 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
2 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
3 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
4 2018 AJDAR 12157 (Certified for Publication 12/19/18).

5
6 **JURISDICTION AND VENUE**

7 29. This Court has jurisdiction over this Action pursuant to California Code of
8 Civil Procedure, Section 410.10.

9 30. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
11 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
12 facilities in this County and/or conducts substantial business in this County, and (ii)
13 committed the wrongful conduct herein alleged in this County against PLAINTIFF and other
14 AGGRIEVED EMPLOYEES.

15 **FIRST CAUSE OF ACTION**

16 **For Violation of the Private Attorneys General Act**

17 **[Cal. Lab. Code §§ 2698, *et seq.*]**

18 **(By PLAINTIFF and Against All Defendants)**

19 31. PLAINTIFF realleges and incorporates by this reference, as though fully set
20 forth herein, the prior paragraphs of this Complaint.

21 32. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
23 the state's labor law enforcement agencies. An action to recover civil penalties under
24 PAGA is fundamentally a law enforcement action designed to protect the public and not to
25 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
26 but to create a means of "deputizing" citizens as private attorneys general to enforce the
27 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
28 public interest to allow aggrieved employees, acting as private attorneys general to recover

1 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

3 33. PLAINTIFF, and such persons that may be added from time to time who
4 satisfy the requirements and exhaust the administrative procedures under the Private
5 Attorney General Act, brings this Representative Action on behalf of the State of California
6 with respect to herself and all individuals who worked for DEFENDANT in California as a
7 Nurse and who were classified as independent contractors ("AGGRIEVED EMPLOYEES")
8 during the time period of October 27, 2021 until a date as determined by the Court (the
9 "PAGA PERIOD").

10 34. On October 27, 2022, PLAINTIFF gave written notice by electronic mail to
11 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
12 employer of the specific provisions of this code alleged to have been violated as required by
13 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
14 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
15 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
16 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

17 35. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
19 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
20 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
21 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
22 required expenses, and (f) failed to provide wages when due, all in violation of the
23 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210,
24 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2750.3 *et seq.*, 2802,
25 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
26 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
27
28

1 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
2 Labor Code Private Attorney General Act of 2004 as the representative of the State of
3 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
4 EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15 Dated: January 20, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
16 LLP

17
18 By: /s/ Nicholas De Blouw
19 Norman B. Blumenthal
20 Kyle R. Nordrehaug
21 Nicholas J. De Blouw

22 *Attorneys for Plaintiff*
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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).