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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11
12 THE CALIFORNIA LABOR AND
WORKFORCE DEVELOPMENT
13 AGENCY, a California governmental
agency, *ex rel.* RENEE MAOZ,

14
15 Plaintiff,

16 v.
17

18 DLV VISION MANAGEMENT, LLC, a
California limited liability company; DLV
19 VISION ASC, LLC, a California limited
liability company; PAUL J.
20 DOUGHERTY, M.D., INC., a California
corporation; and DOES 1-100, inclusive,

21
22 Defendants.
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Case No.: **22ST CV 39857**

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

1 Plaintiff THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY,
2 a California governmental agency, ex rel. RENEE MAOZ (“PLAINTIFF”), on behalf of the State
3 of California and all Aggrieved Employees (defined below), hereby files this Complaint against
4 Defendants DLV VISION MANAGEMENT, LLC, a California limited liability company; DLV
5 VISION ASC, LLC, a California limited liability company; PAUL J. DOUGHERTY, M.D., INC.,
6 a California corporation; and DOES 1-100, inclusive, (collectively referred to herein as
7 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

8 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over PLAINTIFF’s representative claims for penalties on
16 behalf of Aggrieved Employees and the State of California pursuant to California statutes, including
17 but not limited to the PAGA, and decisional law and regulations.

18 3. Venue is proper in the County of Los Angeles 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. The California Labor and Workforce Development Agency is a California
26 governmental entity. PLAINTIFF MAOZ has been delegated authority to sue on behalf of the
27 LWDA pursuant to PAGA.

28 5. PLAINTIFF MAOZ, is, and at all relevant times, was an individual domiciled in the

1 State of California and a citizen of the State of California. PLAINTIFF MAOZ is currently by
2 DEFENDANTS as a non-exempt employee. PLAINTIFF MAOZ worked for DEFENDANTS as a
3 patient counsel and/or similar title(s) from on or around April 5, 2022, through the present.
4 PLAINTIFF MAOZ worked for DEFENDANTS out of a couple of DEFENDANTS' California
5 locations, including but not limited to, two of DEFENDANTS' facilities located in Westlake Village
6 and Simi Valley.

7 6. DEFENDANTS are either a California limited liability company or California
8 corporation that, at all relevant times, were authorized to do business within the State of California
9 and are doing business in the State of California.

10 7. DEFENDANTS own, operate, or otherwise manage vision correction procedure and
11 surgery centers, with multiple facilities located throughout Los Angeles and Ventura counties, in
12 California, including but not limited to, facilities located in Westlake Village and Simi Valley, where
13 DEFENDANTS assigned PLAINTIFF to work during the relevant period.

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

20 9. PLAINTIFF is further informed and believes that, at all relevant times, each
21 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
22 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
23 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
24 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
25 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
26 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
27 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
28 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,

1 controlled, aided and abetted the conduct of all other Defendants.

2 **JOINT LIABILITY**

3 10. Under California law, the definition of the terms “to employ” are broadly construed
4 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
5 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
6 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
7 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
8 was to reach situations in which multiple entities control different aspects of the employment
9 relationship. Supervision of the work, in the specific sense of exercising control over how services
10 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
11 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
12 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
13 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
14 California, applying a less stringent standard to what constitutes sufficient control by a business
15 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
16 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
17 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
18 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
19 employment,” *Id.* at 875 [emphasis added].

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

27 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

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

12 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
13 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
14 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
15 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
16 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
17 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
18 Employees. For example, DEFENDANTS, and each of them, maintain the same principal office
19 (4353 Park Terrace Drive, Suite 150 Westlake Village, CA 91361) and same California registered
20 individual Agent for Service of Process.

21 14. As such, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies,
22 practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices,
23 meal and rest periods, reimbursement of business expenses and other working conditions that were
24 distributed to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that
25 DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF and the
26 Aggrieved Employees in a uniform manner. DEFENDANTS collectively represented to
27 PLAINTIFF and the Aggrieved Employees that each was an "at-will" employee of DEFENDANTS,
28 and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Aggrieved

1 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
2 further collectively represented to PLAINTIFF and Aggrieved Employees in writing the details of
3 their compensation, and the manner in which they were to take meal and rest periods, the procedures
4 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
5 to PLAINTIFF and Aggrieved Employees by which DEFENDANTS collectively would evaluate
6 the wage rates of PLAINTIFF and Aggrieved Employees.

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

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

15 **PAGA ALLEGATIONS**

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

19 All individuals who currently work or formerly worked for any of the DEFENDANTS at
20 any facility/location owned, operated and/or managed by any of the DEFENDANTS in
21 California at any time from one year plus 65 days from the filing of the initial Complaint
22 through the present ("PAGA Period").

23 18. PLAINTIFF and other individuals that currently work or formerly worked for
24 DEFENDANTS are each an "aggrieved employee," as that term is defined under Labor Code section
25 2699(c), as they were each employed by DEFENDANTS during the applicable statutory limitations
26 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
27 PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved Employees, the
28 civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

1 19. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and
2 all Aggrieved Employees, as she was jointly employed by DEFENDANTS and is thereby affected
3 by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018)
4 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
5 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
6 *Id.* at 760-761.

7 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

8 20. On October 14, 2022, PLAINTIFF MAOZ, through counsel, gave written notice by
9 online filing with the California Labor and Workforce Development Agency (“LWDA”) informing
10 it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations
11 alleged in this Complaint (“PAGA Notice”). The LWDA assigned PLAINTIFF the following case
12 number: LWDA-CM-914002-22. PLAINTIFF’s PAGA Notice, a true and correct copy of which is
13 attached hereto as **Exhibit 1**, was also sent to DEFENDANTS via certified mail.

14 21. PLAINTIFF’s PAGA Notice outlined DEFENDANTS’ violations of the California
15 Labor Code and the applicable wage orders on behalf of the State of California and other Aggrieved
16 Employees.

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

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

25 **FACTUAL ALLEGATIONS**

26 24. During the PAGA Period, PLAINTIFF MAOZ and other Aggrieved Employees were
27 employed by DEFENDANTS in the State of California. At all relevant times referenced herein,
28 DEFENDANTS exercised control over PLAINTIFF and the other Aggrieved Employees and

1 suffered and/or permitted them to work.

2 25. PLAINTIFF is employed by DEFENDANTS as a non-exempt employee.
3 PLAINTIFF worked for DEFENDANTS out of a couple of DEFENDANTS' locations, including
4 but not limited to, two of DEFENDANTS' facilities located in Westlake Village and Simi Valley,
5 as a patient counselor and/or similar title from in or around April 5, 2022 through on or about June
6 14, 2022, when DEFENDANTS removed PLAINTIFF from the in-facility work schedules after she
7 reported her pregnancy to DEFENDANTS. PLAINTIFF currently works remotely from home when
8 assigned by DEFENDANTS. PLAINTIFF regularly worked at least six (6) hours per day, at least
9 three (3) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
10 DEFENDANTS as hours worked.

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

18 27. Based on information and belief, DEFENDANTS implemented a policy and/or
19 practice of rounding meal period start and end times and/or automatically deducting at least thirty
20 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
21 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
22 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
23 PLAINTIFF and Aggrieved Employees of all wages owed.

24 28. Based on information and belief, Aggrieved Employees were not paid for all hours
25 worked due to DEFENDANTS' policy and/or practice of rounding time entries or paying according
26 to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work
27 policies and/or practices. For example, based on information and belief, prior to beginning a
28 scheduled shift, PLAINTIFF and other Aggrieved Employees were required to start and/or boot

1 DEFENDANTS' computer system so as to have the system running at the start of the scheduled
2 shift. It was only after this daily off-the-clock boot/start-up time that PLAINTIFF and other
3 Aggrieved Employees could then access the software application required to clock in for the start
4 of their shifts. As such, Aggrieved Employees spent up to at least five (5) minutes before each
5 scheduled shift starting and/or booting DEFENDANTS' computer system in order to clock in and
6 begin his shift. This pre-shift work was off-the-clock and uncompensated resulting in unpaid
7 minimum wages. Based on information and belief, Aggrieved Employees experienced the same
8 issues when clocking back in for meal periods, resulting in additional off-the-clock work. This time
9 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
10 minimum wages.

11 29. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
12 also pressured to complete at least some of their work tasks off-the-clock in order to meet
13 DEFENDANTS' goals and expectations. For example, at times, PLAINTIFF performed off-the-
14 clock work in the form of completing DEFENDANTS-required research, reviewing various policy
15 documents, watching training videos and/or completing continuing education courses, and/or
16 completing other work tasks off-the-clock to meet DEFENDANTS' demands.

17 30. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
18 Employees for time they were required to spend completing training and certification and/or the
19 onboarding process. Based on information and belief, DEFENDANTS required PLAINTIFF and
20 other Aggrieved Employees to review and sign various types of policies and documents, including
21 but not limited to, company policies, employment agreements, confidentiality/trade secret policies,
22 among other documents, but they were not paid for all time spent reviewing and/or completing
23 certification as directed by DEFENDANTS. Based on information and belief, DEFENDANTS had
24 and continue to have a uniform policy and practice of requiring Aggrieved Employees to complete
25 mandatory off-the-clock administrative tasks, onboarding, training, certification, and/or other tasks
26 without compensating for all hours worked, resulting in the underpayment of wages owed to
27 Aggrieved Employees.

28 31. Based on information and belief, PLAINTIFF and other Aggrieved Employees were

1 also required to complete off-the-clock work outside of scheduled shifts due to work-related phone
2 calls and/or messages they received to their personal phones/mobile devices and were required to
3 respond to, including but not limited to, communications from co-workers / staff members, patients,
4 providers and/or supervisors, resulting in significant off-the-clock work.

5 32. Based on further information and belief, DEFENDANTS' computer employee time-
6 keeping system and /or app, regularly malfunctioned such that PLAINTIFF and other Aggrieved
7 Employees were frequently required to either reinitiate the system prior to being able to clock in
8 and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal
9 periods, resulting in consistent off-the-clock work and the underpayment of wages owed to
10 PLAINTIFF and other Aggrieved Employees. For example, PLAINTIFF reports spending at least
11 one hour at least once per week reinitiating, contacting human resources or customer support and/or
12 otherwise troubleshooting DEFENDANTS' timekeeping system(s) so that she could clock in and
13 out for her shifts. This time spent under DEFENDANTS' control was not recorded and not
14 compensated and resulted in unpaid wages, including, unpaid minimum wages.

15 33. Based on information and belief, DEFENDANTS had and has a continuous policy
16 and practice of requiring Aggrieved Employees to travel between DEFENDANTS' facility locations
17 without compensating Aggrieved Employees for the travel time. For example, based on information
18 and belief, due to frequent scheduling issues and/or understaffing, Aggrieved Employees were often
19 required after working at their scheduled facility location to cover a shift at another of
20 DEFENDANTS' clinics/facilities but were not compensated for the time spent driving to the second
21 clinic/facility, resulting in the underpayment of wages owed to Aggrieved Employees.

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

27 35. Based on further information and belief, DEFENDANTS implemented a time-
28 rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved

1 Employees of compensable time because the time-rounding system implemented by
2 DEFENDANTS would almost always, if not always, result in understating actual compensable work
3 time. DEFENDANTS' failure to pay for all time worked by virtue of its time-rounding practices
4 resulted in the underpayment of minimum wages owed to PLAINTIFF and Aggrieved Employees
5 as well as unpaid overtime wages for those Aggrieved Employees who worked more than eight (8)
6 hours in a day and/or more than forty (40) hours in a week.

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

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

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

22 39. Based on information and belief, DEFENDANTS failed to incorporate all non-
23 discretionary remuneration, including but not limited to, shift differential pay, multiple base rates
24 of pay, bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate
25 the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages
26 owed to PLAINTIFF and other Aggrieved Employees. For example, on information and belief,
27 DEFENDANTS compensated Aggrieved Employees with non-discretionary bonuses/incentive pay
28 and/or commissions for scheduling and/or closing various types of medical procedures, including

1 but not limited to, cataract surgeries, yet failed to incorporate this non-discretionary compensation
2 into the regular rate of pay used to calculate the owed overtime rate, resulting in the miscalculation
3 and substantial underpayment of overtime wages owed to Aggrieved Employees.

4 40. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
5 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
6 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
7 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
8 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
9 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
10 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
11 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
12 completely.

13 41. Based on information and belief, other Aggrieved Employees were consistently
14 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
15 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
16 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
17 the need to meet DEFENDANTS' goals and expectations. For example, at times, PLAINTIFF
18 worked more than five and one half hours in a workday but was not provided with any meal period.
19 On information and belief, Aggrieved Employees were consistently forced to take shortened and/or
20 interrupted meal periods due to work-related phone calls/messages they were required to respond to
21 during unpaid, purportedly off-duty meal periods.

22 42. Based on information and belief, DEFENDANTS implemented policies and/or
23 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
24 during unpaid meal periods.

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

1 44. Based on information and belief, despite DEFENDANTS' failure to provide lawful
2 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
3 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
4 deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite
5 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did
6 not receive lawful meal periods.

7 45. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
8 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)
9 minute second meal period. For example, based on information and belief, when PLAINTIFF and
10 other Aggrieved Employees worked more than ten hours in a shift, they did not receive a second
11 meal period.

12 46. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
13 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
14 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
15 did DEFENDANTS have any sort of compliant policy in practice.

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

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

26 49. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
27 additional hour of wages at their respective regular rates of compensation for each workday a lawful
28 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for

1 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
2 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
3 bonuses/incentive pay, commissions, shift differential pay and/or other non-discretionary
4 compensation into the regular rate or compensation for purposes of calculating the owed meal period
5 premium.

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

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

14 52. Based on information and belief, DEFENDANTS did not have a have a compliant
15 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
16 practice. For example, when PLAINTIFF worked more than six hours, she was not provided with
17 any form of a second rest period and any purported first rest period was typically worked through,
18 on duty or otherwise noncompliant, due to the need to monitor work communication devices/answer
19 incoming phone calls, attend to patients/scheduling issues, coordinate with providers/staff members
20 and/or complete other work tasks as directed by DEFENDANTS.

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

25 54. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
26 lasting longer than ten hours. For example, based on information and belief, PLAINTIFF and other
27 Aggrieved Employees were not provided with any form of a third rest period when working shifts
28 lasting longer than ten hours.

1 55. Based on information and belief, DEFENDANTS implemented policies and/or
2 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
3 DEFENDANTS' control during rest periods.

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

7 57. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
8 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in
9 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
10 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
11 for failure to incorporate all non-discretionary remuneration, including but not limited to,
12 bonuses/incentive pay, commissions, shift differential pay, and/or other non-discretionary
13 compensation into the regular rate of compensation for purposes of calculating the owed rest period
14 premium.

15 58. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
16 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
17 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
18 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
19 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
20 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
21 applicable hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate by the employee.

23 59. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
24 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
25 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
26 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
27 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
28 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or

1 other off-the-clock work policies and practices) which results in a violation of Labor Code section
2 226(a).

3 60. Based on information and belief, wage statements issued by DEFENDANTS failed
4 to list all applicable hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
6 For example, as described herein, based on information and belief, DEFENDANTS failed to
7 incorporate all forms of non-discretionary compensation, including but not limited to, shift
8 differential pay, bonus/incentive pay and/or other non-discretionary remuneration earned during the
9 pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime
10 rate(s) for each hour of overtime worked by Aggrieved Employees.

11 61. 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 in violation of Labor Code section 226(a)(8). For example, DEFENDANTS' issued wage statements
15 identify DLV Vision Management LLC as the legal entity that is the employer. However, various
16 documents contained in PLAINTIFF's personnel file, including but not limited to, PLAINTIFF's
17 employment application and various letterheads and/or policy
18 documents/waivers/acknowledgments identify the employer as: "Dougherty Laser Vision" and/or
19 "DLV Vision". As such, DEFENDANTS issued wage statements to Aggrieved Employees that
20 failed to list the correct name and/or address of the legal entity that is the employer.

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

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

1 64. Upon separation of employment, Aggrieved Employees' final paychecks were not
2 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
3 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
4 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
5 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
6 accrued rates.

7 65. These violations subject DEFENDANTS to civil penalties under Labor Code section
8 203, 210, and/or 256.

9 66. **Unreimbursed Business Expenses.** Based on information and belief,
10 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
11 direct consequence of the performance of their job duties without providing reimbursement, in
12 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
13 Employees were improperly required to provide and maintain work tools that are supposed to be the
14 responsibility of the employer.

15 67. Based on information and belief, DEFENDANTS shifted the costs of doing business
16 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
17 to, uniforms and/or the use of Aggrieved Employees' personal mobile phone, personal computers,
18 and data usage for work related purposes including but not limited to receiving and responding to
19 work related messages and/or phone calls. Based on information and belief, Aggrieved Employees
20 were not reimbursed for the cost of using their personal phone for work related purposes and/or the
21 cost of purchasing and/or maintaining work uniforms/clothing. For example, PLAINTIFF regularly
22 received work-related calls/messages to her personal phone from managers and/or supervisors,
23 including but not limited to, regarding scheduling and other work tasks. Moreover, DEFENDANTS
24 regularly required PLAINTIFF to attend remote work meetings using her personal devices.
25 PLAINTIFF was not reimbursed for these business expenses. Based on information and belief, other
26 Aggrieved Employees also were required to use and did use personal devices to perform work duties
27 at home, such as but not limited to, completing trainings/continued education courses as mandated
28 by DEFENDANTS.

1 68. Based on further information, DEFENDANTS required Aggrieved Employees to use
2 their personal vehicles for work, including but not limited to, for traveling between DEFENDANTS'
3 various clinics/facilities/locations without reimbursing them for the personal vehicle expenses they
4 incurred in connection therewith, including but not limited to, gas, vehicle wear and tear, and
5 mileage. As such, DEFENDANTS failed to compensate Aggrieved Employees at the Internal
6 Revenue Service (IRS) mandated per mile compensation rate for the relevant period.

7 69. Based on information and belief, DEFENDANTS required Aggrieved Employees to
8 pay for the purchase and/or maintenance of uniforms/work clothing. For example, PLAINTIFF was
9 required to purchase scrubs and/or other work clothing in a specific color and particular brand
10 without receiving any reimbursement from DEFENDANTS. PLAINTIFF estimates she incurred
11 expenses of at least \$50 for uniforms and/or other work clothing/protective gear she was required
12 to purchase and/or maintain but for which she was not reimbursed by DEFENDANTS.

13 70. Based on further information and belief, DEFENDANTS failed to provide
14 reimbursement / full reimbursement for expenses Aggrieved Employees incurred as a result of
15 working for DEFENDANTS remotely and/or from their homes, including but not limited to, cost of
16 internet service, home electricity, cost of additional memory and/or virus software for home
17 computer / home computer use, among other business expenses associated with remote work as
18 required by DEFENDANTS. For example, DEFENDANTS required PLAINTIFF to attend "team
19 meetings" via Zoom and/or other similar platforms but did not compensate PLAINTIFF in any way
20 for being required to use her personal computer/devices and electricity for DEFENDANTS'
21 business purposes. Based on information and belief, DEFENDANTS has a policy and practice of
22 failing to reimburse Aggrieved Employees for all costs associated with mandated work from home,
23 including but not limited to, home electricity and home internet costs.

24 71. Based on information and belief, DEFENDANTS regularly failed to reimburse and
25 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
26 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
27 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
28 assigned by DEFENDANTS.

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

5 73. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
6 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
7 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

8 74. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
9 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
10 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
11 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
12 required by law, including but not limited to the following records: total daily hours worked,
13 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
14 began and ended each work period, time records of meal periods, and accurate itemized wage
15 statements.

16 75. DEFENDANTS have failed and continue to fail to keep accurate and complete
17 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
18 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
19 employer control during unpaid meal periods, failure to record the true start and end times of meal
20 periods, shift start times and shift end times, and other off-the-clock work policies and practices
21 described herein.

22 76. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
23 to provide proper paid sick leave to Aggrieved Employees. DEFENDANTS either failed to provide
24 paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay
25 owed to PLAINTIFF and other Aggrieved Employees by failing to base the accrued sick leave hours
26 on the correct number of hours worked (as a result of the rounding/automatic deduction policies and
27 practices for meal periods and/or shift start and end times/other required off-the-clock work
28 including but not limited to unpaid meal periods) and by failing to incorporate multiple rates of pay

1 and/or all non-discretionary remuneration, including but not limited to, non-discretionary
2 bonuses/incentive pay, commissions, shift differential pay, commission and/or piece-rate
3 compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

4 77. Upon information and belief, DEFENDANTS further failed to place Aggrieved
5 Employees on notice of their paid sick leave rights – or thereby putting their entitlement to sick
6 leave in a Labor Code section 2810.5 notice. Based on information and belief, DEFENDANTS
7 failed to provide notice of the correct sick leave amount balance available to Aggrieved Employees
8 on their wage statements or other written statement. Moreover, based on information and belief,
9 DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick
10 leave.

11 78. Based on information and belief, throughout the relevant time period,
12 DEFENDANTS failed to provide notice of the balance of sick leave pay left for Aggrieved
13 Employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure,
14 Aggrieved Employees would have used their paid sick leave at least prior to their respective
15 separations, for as on several occasions thereafter, he or she would have been entitled to use the
16 banked sick leave and earn appropriate compensation.

17 79. Upon information and belief, DEFENDANTS failed and continue to fail to comply
18 with Labor Code section 246, by failing to provide Aggrieved Employees with a Labor Code section
19 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid
20 time off leave an employer provides in lieu of sick leave, at the time it pays wages.

21 80. As such, DEFENDANTS have violated California's paid sick leave laws and
22 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
23 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
24 unlawful practices and policies violate Labor Code sections 245-248.5.

25 81. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
26 that all employers with 26 or more employees are required to provide up to 80 hours for covered
27 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
28 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS

1 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
2 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
3 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

25 86. **Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
26 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
27 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
28 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of

1 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

2 87. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

3 Unlawful Financial and Criminal Background Checks.

4 88. Based on information and belief, DEFENDANTS required Aggrieved Employees to
5 agree in writing to unlawful conditions of employment including but not limited to unlawful
6 criminal and/or financial checks and/or unlawful non-compete/non solicitation agreements as a
7 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

8 89. Based on information and belief, DEFENDANTS ordered unlawful financial credit
9 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
10 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
11 employment, in violation of California and Federal law, which results in a further violation of Labor
12 Code section 432.5.

13 90. Based on information and belief, DEFENDANTS also required Aggrieved
14 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
15 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
16 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
17 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*)

18 91. Based on information and belief, DEFENDANTS required Aggrieved Employees to
19 agree in writing to a background check which failed to abide by the requirements set forth in CA
20 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
21 failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all),
22 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
23 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
24 failing to provide a way by which the individual could request a copy of the report, failing to disclose
25 the name, address, and telephone number of the third party preparing the report, and failing to
26 properly obtain authorization or consent to such a background check, and thus was an unlawful
27 background check.

28 92. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or

1 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
2 section 432.5.

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

8 94. Based on further information and belief, DEFENDANTS knew that requiring
9 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
10 condition of obtaining and/or holding employment was unlawful.

11 95. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
12 condition of employment, DEFENDANTS violated Labor Code section 432.5.

13 Unlawful Inquires into Criminal History

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

18 97. Upon information and belief, DEFENDANTS, in violation of California law,
19 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
20 ("FEHA"), asked Aggrieved Employees about convictions prior to extending an offer of
21 employment and/or otherwise impermissibly inquired into criminal history on its employment
22 application in violation of California law, and in violation of Labor code section 432.5.

23 98. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
24 engaged in these same herein described unlawful practices, which led to violations of the California
25 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
26 unlawful practices to all of its employees that it applied to PLAINTIFF.

FIRST CAUSE OF ACTION
VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS
2698, *ET SEQ.*

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

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

Failure to Keep Accurate Records

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

101. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate and complete records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

102. DEFENDANTS’ failure to keep “accurate and complete” payroll records for PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay period during which the referenced statutes and Wage Order provisions were violated.¹

Meal Period Violations

103. California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and

¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”) (emphasis added).

1 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004.

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

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

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

26 107. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
27 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
28 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of

1 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
2 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
3 periods completely.

4 108. Based on information and belief, DEFENDANTS had and continue to have a policy
5 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
6 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
7 Aggrieved Employees did not receive compliant meal periods.

8 109. Moreover, based on information and belief, Aggrieved Employees did not receive a
9 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

10 110. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
11 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
12 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
13 violation of California's meal period laws.

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

19 112. These unlawful meal period policies and practices result in violations of Labor Code
20 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
21 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
22 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
23 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

24 **Rest Period Violations**

25 113. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
26 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
27 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
28 "insofar as practicable." In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012),

1 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
2 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
3 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
4 1029). The rest period requirement obligates employers to permit and authorize employees to take
5 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
6 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
7 257. If the employer fails to provide any required rest period, the employer must pay the employee
8 one hour of pay at the employee's regular rate of compensation for each workday the employer did
9 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
10 applicable IWC Wage Order, §12(B).

11 114. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
12 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
13 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
14 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
15 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
16 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

17 115. Based on information and belief, DEFENDANTS implemented policies and/or
18 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
19 employer control during rest periods. Based on further information and belief, Aggrieved
20 Employees were pressured to complete their work duties according to a designated schedule such
21 that rest periods were only taken once tasks were completed, and/or as time permitted.

22 116. As a result, PLAINTIFF and Aggrieved Employees did not receive legally compliant
23 first, second, or third rest periods as required by California law.

24 117. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
25 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
26 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
27 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
28 but not limited to, bonuses/incentive pay, commissions, shift differential pay, and/or other non-

1 discretionary compensation into the regular rate of compensation for purposes of determining the
2 owed rest period premium.

3 118. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
4 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
5 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

6 **Minimum and Overtime Wage Violations**

7 119. California law provides that employees in California must be paid for all hours
8 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
9 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
10 The minimum wage standard applies to each hour employees worked for which they were not paid.
11 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
12 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
13 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

20 121. As explained above, DEFENDANTS violated California's minimum wage and
21 overtime wage laws by failing to compensate PLAINTIFF and Aggrieved Employees for all hours
22 worked by virtue of, among other things, DEFENDANTS' time rounding, automatic deduction for
23 meal periods, off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift
24 and/or otherwise off-the-clock work, and/or payment according to scheduled hours worked rather
25 than actual hours worked (described above), which resulted in the failure to account for all hours
26 worked and thus the denial of minimum and overtime wages.

27 122. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
28 Aggrieved Employees for all hours worked.

1 123. Based on information and belief, DEFENDANTS had actual or constructive
2 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
3 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
4 periods, policy and practice of payment according to scheduled work time rather than actual work
5 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
6 owed to PLAINTIFF and other Aggrieved Employees.

7 124. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
8 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
9 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
10 violation of California's overtime laws.

11 125. Based on further information and belief, DEFENDANTS required PLAINTIFF and
12 other Aggrieved Employees to work more than eight (8) hours on days that were not scheduled
13 workdays without compensating PLAINTIFF and other Aggrieved Employees at twice their regular
14 rate(s) of pay for the time worked beyond eight (8) hours on those days, in violation of California
15 overtime laws, including but not limited to, California Labor Code sections 510 and 511, the
16 applicable Wage Order, and Labor Code section 1198.

17 126. Based on information and belief, DEFENDANTS further violated California's
18 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
19 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
20 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
21 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
22 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
23 other Aggrieved Employees.

24 127. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
25 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
26 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
27 Wage Orders, section 20.

1 **Statutory Wage Violations**

2 128. California Labor Code section 223 makes it unlawful for an employer to secretly pay
3 wages lower than required by statute while purporting to pay legal wages. As described above,
4 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
5 earned minimum and overtime compensation for all hours worked which resulted in the payment of
6 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
7 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
8 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
9 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
10 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
11 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
12 Labor Code § 2699(f)-(g).

13 **Refusal to Make Payment**

14 129. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
15 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
16 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
17 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
18 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
19 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
20 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
21 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

22 **Business Expense Violations**

23 130. California law requires employers to indemnify their employees for all necessary
24 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
25 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable

26 _____
27 ² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
2 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
3 incurred by the employee enforcing the rights granted by this section.”

4 131. Among other things, under California law, when employees must use their personal
5 cellphones for work-related purposes, the employer must reimburse them for a reasonable
6 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
7 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
8 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
9 *Id.* 1144-1145.

10 132. Further, “any contract or agreement, express or implied, made by any employee to
11 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
12 any employee or his personal representative of any right or remedy to which he is entitled to under
13 the laws of this State.” *See* Cal. Lab. Code section 2804.

14 133. As described above, PLAINTIFF and the Aggrieved Employees were improperly
15 required to pay for business expenses that are legally the responsibility of the employer.

16 134. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
17 full reimbursement for all reasonable expenses associated with carrying out their duties required
18 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
19 expenses in violation of Labor Code section 2802.

20 135. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
21 Employees have suffered injury in that they were not completely reimbursed as mandated by
22 California law.

23 136. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
24 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
25 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
26 Code § 2802 and the applicable Wage Order.

27 **Wage Statement Violations**

28 137. California law requires every employer semi-monthly or at the time of each payment

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

9 138. Moreover, due to violations detailed above, including but not limited to,
10 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
11 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
12 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
13 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
14 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
15 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
16 compensation earned during the pay period into the regular rate of pay for purposes of calculating
17 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
18 overtime worked by PLAINTIFF and other Aggrieved Employees.

19 139. As explained above, wage statements issued by DEFENDANTS failed to list the
20 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
21 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
22 employer control during unpaid meal periods, payment according to scheduled hours worked rather
23 than actual hours worked, and/or other off-the-clock work policies and practices all described in
24 greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all
25 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section
26 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

27 140. Based on information and belief, wage statements issued by DEFENDANTS failed
28 to list all applicable hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
2 For example, as explained above, DEFENDANTS failed to incorporate all non-discretionary rate
3 into the regular rate of pay used to calculate the overtime rate, thereby failing to display an accurate
4 overtime rate on wage statements issued to Aggrieved Employees, in violation of, including but not
5 limited to, Labor Code section 226(a)(9).

6 141. Separately, and independent from the above allegations, DEFENDANTS issued
7 wage statements to PLAINTIFF and Aggrieved Employees that violate Labor Code section
8 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the employer.

9 142. DEFENDANTS' failure to accurately list all hours worked on all wage statements
10 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
11 Employees over whether they received all wages owed to them.

12 143. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
13 they could not easily determine whether they received all wages owed to them and whether they
14 were paid for all hours worked.

15 144. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
16 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
17 injury as they could not contact their employer regarding any question(s) they had about wages paid.

18 145. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
19 Aggrieved Employees with accurate, itemized wage statements.

20 146. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
21 Employees have suffered injury. The absence of accurate information on their wage statements has
22 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
23 mathematical computations to determine the amount of wages owed, and will cause difficulty and
24 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
25 submission of inaccurate information about wages and amounts deducted from wages to state and
26 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
27 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
28 and pay records than if DEFENDANT had complied with its legal obligations.

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

4 **Standard Conditions of Labor Violations**

5 148. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
6 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
7 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
8 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
9 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
10 and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject
11 DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

12 **Sick Leave Violations**

13 149. DEFENDANTS violated California's paid sick leave laws including, Labor Code
14 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
15 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
16 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
17 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
18 not limited to, non-discretionary bonuses/incentive pay, commissions, shift differential pay,
19 multiple base rates of pay, commission and/or piece-rate compensation and/or other non-
20 discretionary compensation into the sick leave pay rate calculation.

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

26 151. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
27 their paid sick leave at least prior to their respective separations, for as on several occasions

28 ³ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation")

1 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
2 compensation.

3 152. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
4 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
5 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
6 were entitled to the maximum number of hours accruable.

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

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

13 155. On information and belief, PLAINTIFF alleges that all of these practices were
14 experienced and continue to be experienced by other Aggrieved Employees.

15 156. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
16 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
17 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

18 **Failure To Provide Supplemental Paid Sick Leave.**

19 157. Labor Code § 248.2 provides that all employers with 26 or more employees are
20 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
21 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based
22 on information and belief, DEFENDANTS violated Labor Code § 248.2 by not providing Aggrieved
23 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
24 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
25 Labor Code section 248.6.

26 **Failure to Pay Vested Vacation/Paid Time Off**

27 158. California Labor Code section 227.3 provides that when an employer policy provides
28 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,

1 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
2 employee's final rate in accordance with such contract of employment or employer policy respecting
3 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
4 off upon termination.

5 159. Based on information and belief, DEFENDANTS had and continue to have a
6 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
7 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
8 to Aggrieved Employees upon separation of employment, in violation of California law, including
9 but not limited to, Labor Code section 227.3.

10 **Untimely Payment of Final Wages**

11 160. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
12 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
13 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an
14 employee not having a written contract for a definite period quits his or her employment, his or her
15 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
16 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
17 to his or her wages at the time of quitting."

18 161. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
19 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
20 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
21 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
22 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
23 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

24 162. Based on information and belief, DEFENDANTS fail to timely pay final wages to
25 Aggrieved Employees upon separation of employment in violation of Labor Code sections 201-202
26 and/or did not include all owed vacation pay and/or fail to timely provide final wages with all owed
27 vacation and/or paid time off. Based on information and belief, DEFENDANTS untimely provide
28 final wages to Aggrieved Employees without regard to the timing requirements of Labor Code

1 sections 201-202.

2 163. Moreover, final paychecks, once provided to Aggrieved Employees did not include
3 all wages owed as they are devoid of, including but not limited to, all owed minimum wages,
4 overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages
5 at the properly accrued rates.

6 164. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
7 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
8 256.

9 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

10 165. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
11 require any employee or applicant for employment to agree, in writing, to any term or condition
12 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
13 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to submit to unlawful
14 criminal and/or financial checks as a condition of obtaining and/or continuing employment.

15 166. The California Labor Code places certain procedural and substantive limits on an
16 employers’ ability to conduct employee background checks and on how employers can use the
17 information they obtain through those background checks. Labor Code section 1024.5 states that
18 employers, except for financial institutions, may order a credit check only if the individual works
19 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
20 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
21 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
22 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
23 background check, including but not limited to identifying an appropriate reason for the background
24 check, a separate consent form with required disclosures and certain formatting requirements,
25 additional forms such as a summary of rights, a way by which to request a copy of the report, as
26 well as proper notice of adverse actions taken, among other statutory requirements.

27 167. Based on information and belief, DEFENDANTS ordered unlawful financial credit
28 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to

1 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
2 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

3 168. Based on information and belief, DEFENDANTS required Aggrieved Employees to
4 submit and/or agree to submit in writing to unlawful criminal background checks and/or unlawful
5 non-compete and/or unlawful non-solicitation agreements as a condition of obtaining and/or holding
6 employment in violation of the ICRAA and the FCRA as alleged above and/or the California
7 Business and Professions Code and/or the California Labor Code.

8 169. Based on further information and belief, DEFENDANTS required Aggrieved
9 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
10 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
11 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
12 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

13 170. Based on further information and belief, DEFENDANTS knew that requiring
14 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
15 condition of obtaining and/or holding employment was unlawful.

16 171. By requiring that Aggrieved Employees sign off on the illegal background and/or
17 financial checks, DEFENDANTS violated Labor Code section 432.5.

18 Unlawful Inquires into Criminal History

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

23 173. Upon information and belief, DEFENDANTS, in violation of California law,
24 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
25 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
26 employment and/or otherwise impermissibly inquired into criminal history on its employment
27 application in violation of California law.

28 174. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor

1 Code section 432.7. By asking about convictions at the application phase or prior to extending an
2 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
3 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
4 disclose arrests and/or convictions as a condition of employment.

5 175. Under the provisions of PAGA and the above mentioned Labor Code sections,
6 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
7 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
8 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
9 interpretations of these laws by California Courts and administrative bodies, as well as any other
10 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

11 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
12 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute,
13 pursuant to Labor Code section 2699(a); and

14 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
15 violations without a civil penalty recoverable under the PAGA, all in the default amounts provided
16 by Labor Code section 2699(f).

17 c. The proper measure of penalties under PAGA is the number of violations, whether
18 those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a
19 party to this action or not.

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

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PRAYER FOR RELIEF

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

1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
3. For reasonable attorney's fees and costs of suit; and
4. For such other and further relief that the Court deems just and proper.

Dated: December 21, 2022

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff

EXHIBIT

1



Los Angeles Office
9440 Santa Monica Blvd.
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October 14, 2022

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Renata A. Watts,
Agent for Service of Process for:
DLV Vision Management, LLC
4353 Park Terrace Dr Suite 150
Westlake Village, CA 91361

Renata Amber Watts,
Agent for Service of Process for:
Paul J. Dougherty, M.D., Inc.
4353 Park Terrace Dr Suite 150
Westlake Village, CA 91361

DLV Vision Management, LLC
Attn: Human Resources/ Legal Department
4353 Park Terrace Dr Suite 150
Westlake Village, CA 91361

Paul J. Dougherty, M.D., Inc.
Attn: Human Resources/ Legal
Department
4353 Park Terrace Dr Suite 150
Westlake Village, CA 91361

Renata Watts,
Agent for Service of Process for:
DLV Vision ASC, LLC
4353 Park Terrace Dr # 150
Westlake Village, CA 91361

DLV Vision ASC, LLC
Attn: Human Resources/ Legal Department
4353 Park Terrace Dr # 150
Westlake Village, CA 91361

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; DLV Vision Management, LLC; DLV Vision ASC, LLC; and Paul J. Dougherty, M.D., Inc.
Date: October 14, 2022
Subject: *Renee Maoz v. DLV Vision Management, LLC, et al.*

Introduction

This office represents COMPLAINANT, Renee Maoz (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: DLV Vision Management, LLC; DLV Vision ASC, LLC; and Paul J. Dougherty, M.D., Inc. (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with

the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had

the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages vision correction procedure and surgery centers, with multiple facilities located throughout Los Angeles and Ventura counties, in California.¹ Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT is currently employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER out of a couple of EMPLOYER's locations, including

¹ See <https://www.doughertylaservision.com/locations/>. Last visited on October 10, 2022.

but not limited to, two of EMPLOYER's facilities located in Westlake Village and Simi Valley, as a patient counselor or similar title, from in or around April 5, 2022 through on or about June 14, 2022, when EMPLOYER removed COMPLAINANT from the in-facility work schedule after she reported her pregnancy to EMPLOYER. COMPLAINANT currently works for EMPLOYER remotely from home when assigned by EMPLOYER. COMPLAINANT regularly worked at least six (6) hours per day, at least three (3) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked. Based on information and belief, EMPLOYER also compensated NON-EXEMPT AGGRIEVED EMPLOYEES with commissions and/or bonuses/incentive pay and/or other non-discretionary compensation.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (16) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT

AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

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

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor

Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-

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

minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, at times, COMPLAINANT worked more than five and one half hours in a workday but was not provided with any meal period. On information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently forced to take shortened and/or interrupted meal periods due to work-related phone calls/messages they were required to respond to during unpaid, purportedly off-duty meal periods.

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

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

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

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

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES'

meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, commissions, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "i>n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, when COMPLAINANT worked more than six hours, she was not provided with any form of a second rest period and any purported first rest period was typically worked through, on duty or otherwise noncompliant, due to the need to monitor work communication devices/answer incoming phone calls, attend to patients/scheduling issues, coordinate with providers/staff members and/or complete other work tasks as directed by EMPLOYER.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours.

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, based on information and belief, prior to beginning a scheduled shift, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to start and/or boot EMPLOYER's computer system so as to have the system running at the start of the scheduled shift. It was only after this daily off-the-clock boot/start-up time that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES could then access the software application required to clock in for the start of their shifts. As such, NON-EXEMPT AGGRIEVED EMPLOYEES spent up to at least five (5) minutes before each scheduled shift starting and/or booting EMPLOYER's computer system in order to clock in and begin his shift. This pre-shift work was off-the-clock and uncompensated resulting in unpaid minimum and overtime wages.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking back in for meal periods, resulting in additional off-the-clock work. This time spent under EMPLOYER' control was not recorded and not compensated and resulted in unpaid minimum wages.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet EMPLOYER's goals and expectations. For example, at times, COMPLAINANT performed off-the-clock work in the form of completing EMPLOYER-required research, reviewing various policy documents, watching training videos and/or completing continuing education courses, and/or completing other work tasks off-the-clock to meet EMPLOYER's demands.

Based on information and belief, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing training and certification and/or the onboarding process. Based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to review and sign various types of policies and documents, including but not limited to, company policies, employment agreements, confidentiality/trade secret policies, among other documents, but they were not paid for all time spent reviewing and/or completing certification as directed by EMPLOYER. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to complete mandatory off-the-clock administrative tasks, onboarding, training, certification, and/or other tasks without compensating for all hours worked, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their personal phones/mobile devices and were required to respond to, including but not limited to, communications from co-workers / staff members, patients, providers and/or supervisors, resulting in significant off-the-clock work.

Based on further information and belief, EMPLOYER's computer employee time-keeping system and /or app, regularly malfunctioned such that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were frequently required to either reinitiate the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in consistent off-the-clock work and the underpayment of minimum and overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT reports spending at least one hour at least once per week reinitiating, contacting human resources or customer support and/or otherwise troubleshooting EMPLOYER's timekeeping system(s) so that she could clock in and out for her shifts. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum and overtime wages.

Based on information and belief, EMPLOYER had and has a continuous policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to travel between DEFENDANTS' facility locations without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time. For example, based on information and belief, due to frequent scheduling issues and/or understaffing, NON-EXEMPT AGGRIEVED EMPLOYEES were often required after working at their scheduled facility location to cover a shift at another of EMPLOYER's clinics/facilities but were not compensated for the time spent driving to the second clinic/facility, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED

EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to EMPLOYER's premises and/or subject to EMPLOYER's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus/incentive pay, commissions and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, on information and belief, EMPLOYER compensated NON-EXEMPT AGGRIEVED EMPLOYEES

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

with non-discretionary bonuses/incentive pay and/or commissions for scheduling and/or closing various types of medical procedures, including but not limited to, cataract surgeries, yet failed to incorporate this non-discretionary compensation into the regular rate of pay used to calculate the owed overtime rate, resulting in the miscalculation and substantial underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

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

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

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered

employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

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

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer. For example, EMPLOYER's issued wage statements identify DLV Vision Management LLC as the legal entity that is the employer. However, various documents contained in COMPLAINANT's personnel file, including but not limited to, COMPLAINANT's employment application and various letterheads and/or policy documents/waivers/acknowledgments identify the employer as: "Dougherty Laser Vision" and/or "DLV Vision".

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

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

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

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

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

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

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

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

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

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED

EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

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

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

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

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone, personal computers, and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing. For example, COMPLAINANT regularly received work-related calls/messages to her personal phone from managers and/or supervisors, including but not limited to, regarding scheduling and other work tasks. Moreover, EMPLOYER regularly required COMPLAINANT to attend remote work meetings using her personal devices. COMPLAINANT was not reimbursed for these business expenses. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES also were required to use and did use personal devices to perform work duties at home, such as but not limited to, completing trainings/continued education courses as mandated by EMPLOYER.

Based on further information, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles for work, including but not limited to, for traveling between EMPLOYER's various clinics/facilities/locations without reimbursing them for the personal vehicle expenses they incurred in connection therewith, including but not limited to, gas, vehicle wear and tear, and mileage. As such, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the Internal Revenue Service (IRS) mandated per mile compensation rate for the relevant period.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to pay for the purchase and/or maintenance of uniforms/work clothing. For example, COMPLAINANT was required to purchase scrubs and/or other work clothing in a specific color and particular brand without receiving any reimbursement from EMPLOYER. COMPLAINANT estimates she incurred expenses of at least \$50 for uniforms and/or other work clothing/protective gear she was required to purchase and/or maintain but for which she was not reimbursed by EMPLOYER.

Based on further information and belief, EMPLOYER failed to provide reimbursement / full reimbursement for expenses NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES incurred as a result of working for EMPLOYER remotely and/or from their homes, including but not limited to, cost of internet service, home electricity, cost of additional memory and/or virus software for home computer / home computer use, among other business expenses associated with remote work as required by EMPLOYER. For example, EMPLOYER required COMPLAINANT to attend "team meetings" via Zoom and/or other similar platforms but did not compensate COMPLAINANT in any way for being required to use her personal computer/devices and electricity for EMPLOYER's business purposes. Based on information and belief, EMPLOYER has a policy and practice of failing to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for all costs associated with mandated work from home, including but not limited to, home electricity and home internet costs.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

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

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

Conclusion

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

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, appearing to read "Kiara Bramasco", written in a cursive style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC