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Assigned for All Purposes

Judge William Claster

cx-104

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ORANGE**

12 CUONG NGUYEN, on behalf of the State
13 of California, the Labor Workforce
14 Development Agency, as a private attorney
general, and on behalf of all aggrieved
employees,

15 Plaintiff,

16 v.

17 APPLIED MEDICAL RESOURCES
18 CORPORATION, a California
19 corporation; APPLIED
20 MANUFACTURING, LLC, a California
21 limited liability company; APPLIED
22 MEDICAL CORPORATION, a Delaware
23 corporation; APPLIED MEDICAL
DISTRIBUTION CORPORATION, a
California corporation; and DOES 1-100,
inclusive,

24 Defendants.
25
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27
28

Case No.: 30-2022-01297896-CU-OE-CXC

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

1 Plaintiff CUONG NGUYEN (“PLAINTIFF”), on behalf of the State of California, the Labor
2 Workforce Development Agency, as a private attorney general, and on behalf of all Aggrieved
3 Employees (defined below), hereby files this Complaint against Defendants APPLIED MEDICAL
4 RESOURCES CORPORATION, a California corporation; APPLIED MANUFACTURING, LLC,
5 a California limited liability company; APPLIED MEDICAL CORPORATION, a Delaware
6 corporation; APPLIED MEDICAL DISTRIBUTION CORPORATION, a California corporation;
7 and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
8 informed and believes and thereon alleges as follows:

9 **INTRODUCTION**

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

15 2. The California Labor and Workforce Development Agency (“LWDA”) is a
16 California governmental entity. PLAINTIFF has been delegated authority to sue on behalf of the
17 LWDA pursuant to PAGA.

18 **JURISDICTION AND VENUE**

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

22 4. Venue is proper in the County of Orange pursuant to California Code of Civil
23 Procedure section 395.5 because DEFENDANTS transact business within this judicial district and
24 some of the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this this judicial
25 district. Also, see, *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th
26 1069 (venue in a PAGA action is proper in any county where the defendants committed Labor Code
27 violations against some of its employees).
28

1 **THE PARTIES**

2 5. PLAINTIFF, is, and at all relevant times, was an individual domiciled in the State of
3 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
4 as a non-exempt employee. PLAINTIFF worked for DEFENDANTS as a material handler and/or
5 similar title(s) from in or around July 2021 through in or around late November 2021. PLAINTIFF
6 worked for DEFENDANTS out of DEFENDANTS' location in Rancho Santa Margarita, California.

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

10 7. DEFENDANTS own, operate, or otherwise manage a medical device manufacturing
11 business with its global headquarters located in Rancho Santa Margarita, California.
12 DEFENDANTS own, operate or otherwise manage several plants, facilities, and/or locations in
13 California, including but not limited to, facilities/locations in Orange County, including but not
14 limited to, the location PLAINTIFF worked at in Rancho Santa Margarita, California and locations
15 in Lake Forest, California and Irvine California.¹

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

22 9. PLAINTIFF is further informed and believes that, at all relevant times, each
23 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
24 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
25 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
26 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
27 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this

28 ¹ See <https://www.appliedmedical.com/WhoWeAre> (Last Visited on December 18, 2022)

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

5 **JOINT LIABILITY**

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

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

1 PLAINTIFF and Aggrieved Employees to work for them.

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

15 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
16 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
17 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
18 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
19 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
20 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
21 Employees. For example, various wage statements DEFENDANTS issued to PLAINTIFF list
22 "Applied Medical Resources Corporation" as the legal entity that is the employer. Other wage
23 statements simply list "Applied Medical" and/or the logo for "Applied Medical" as the name of the
24 employer. Moreover, documents contained in PLAINTIFF's personnel file, including without
25 limitation, proprietary agreement, other employment agreements and/or employment policies all
26 identify "Applied Medical Corporation" as the employer. Moreover, DEFENDANTS, and each of
27 them share the same California principal address and registered individual agent for service.

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

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

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

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

22 **PAGA ALLEGATIONS**

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

26 All individuals who currently work or formerly worked for any of the DEFENDANTS at
27 any facility/location owned, operated and/or managed by any of the DEFENDANTS in
28 California at any time from one year plus 65 days from the filing of the initial Complaint

1 through the present (“PAGA Period”).

2 18. PLAINTIFF and other individuals that currently work or formerly worked for
3 DEFENDANTS are each an “aggrieved employee,” as that term is defined under Labor Code section
4 2699(c), as they were each employed by DEFENDANTS during the applicable statutory limitations
5 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
6 PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved Employees, the
7 civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

8 19. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and
9 all Aggrieved Employees, as she was jointly employed by DEFENDANTS and is thereby affected
10 by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018)
11 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
12 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
13 *Id.* at 760-761.

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

15 20. On October 13, 2022, PLAINTIFF, through counsel, gave written notice by online
16 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
17 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
18 in this Complaint (“PAGA Notice”). The LWDA assigned PLAINTIFF the following case number:
19 LWDA-CM-913779-22. PLAINTIFF’s PAGA Notice, a true and correct copy of which is attached
20 hereto as **Exhibit 1**, was also sent to DEFENDANTS via certified mail.

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

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

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

FACTUAL ALLEGATIONS

24. During the PAGA Period, PLAINTIFF and other Aggrieved Employees were employed by DEFENDANTS in the State of California. At all relevant times referenced herein, DEFENDANTS exercised control over PLAINTIFF and the other Aggrieved Employees and suffered and/or permitted them to work.

25. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee. PLAINTIFF worked for DEFENDANTS as a material handler and/or similar title(s) from in or around July 2021 through in or around late November 2021. PLAINTIFF worked for DEFENDANTS out of DEFENDANTS' location in Rancho Santa Margarita, California. PLAINTIFF regularly worked at least ten (10) hours per day, at least (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

26. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS' 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 below.

27. Based on information and belief, DEFENDANTS 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 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded lawful meal periods, depriving PLAINTIFF and Aggrieved Employees of all wages owed.

1 28. Based on information and belief, Aggrieved Employees were not paid for all hours
2 worked due to DEFENDANTS' policy and/or practice of rounding time entries or paying according
3 to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work
4 policies and/or practices. Based on information and belief, at times, Aggrieved Employees were
5 required to stand in line behind other employees to access DEFENDANTS' electronic time-keeping
6 system and/or were required to undergo security screenings and/or had to spend time reinitiating
7 DEFENDANTS' time-keeping system before they could clock in for the start of their shifts. This
8 off-the-clock pre-shift work, including but not limited to, time spent waiting for other employees to
9 clock in for their shifts, undergoing security screenings and/or reinitiating the time-keeping
10 mechanism, was not compensated, resulting in the underpayment of minimum and overtime wages
11 owed to PLAINTIFF and other Aggrieved Employees.

12 29. Based on information and belief, DEFENDANTS did not compensate Aggrieved
13 Employees for time spent donning and doffing personal protective equipment, safety equipment
14 and/or uniforms (e.g., safety goggles/glasses and/or face masks) during meal periods, rest periods,
15 before the start of a scheduled shift, and after completing a scheduled shift.

16 30. Based on information and belief, DEFENDANTS had a uniform policy and practice
17 of prohibiting Aggrieved Employees from clocking in prior to their scheduled shift start times while
18 requiring that they consistently perform pre-shift off-the-clock work that was neither recorded nor
19 compensated.

20 31. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
21 required to complete other off-the-clock work tasks after clocking out for the end of their shifts
22 and/or during uncompensated meal periods, resulting in the underpayment of minimum and
23 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

24 32. Based on further information and belief, DEFENDANTS' electronic employee time-
25 keeping system at times malfunctioned such that Aggrieved Employees were required to either
26 reinitiate the system prior to being able to clock in and/or were unable to clock in at all for the start
27 of their shifts and/or clock back in from meal periods, resulting in consistent off-the-clock work and
28 the underpayment of minimum and overtime wages owed to Aggrieved Employees. Based on

1 information and belief, Aggrieved Employees experienced the same issues when clocking out for
2 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
3 recorded and not compensated and resulted in unpaid minimum wages.

4 33. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
5 also required to complete off-the-clock work outside of scheduled shifts due to work-related emails
6 / messages / calls they received to their personal phones and/or personal computers/mobile devices
7 and were required to review and/or respond to outside of their scheduled shift times, including but
8 not limited to, communications from supervisors regarding scheduling and/or other work tasks,
9 resulting in significant off-the-clock work.

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

15 35. Based on further information and belief, DEFENDANTS implemented a time-
16 rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved
17 Employees of compensable time because the time-rounding system implemented by
18 DEFENDANTS would almost always, if not always, result in understating actual compensable work
19 time. For example, PLAINTIFF's wage statements show that DEFENDANTS regularly rounded
20 PLAINTIFF's total hours worked to the nearest quarter, half, or whole hour, which resulted in
21 shaving off compensable work time and failing to pay PLAINTIFF for all hours worked. By way of
22 illustration, DEFENDANTS' wage statement issued to PLAINTIFF for pay period starting 10/10/21
23 and ending 10/23/21 shows PLAINTIFF's hours rounded to exactly 72.00 regular hours worked and
24 exactly 18.00 overtime hours worked; similarly, DEFENDANTS' issued wage statement to
25 PLAINTIFF for pay period starting 10/24/21 and ending 11/6/21 shows exactly 72.00 regular hours
26 worked and exactly 24.50 overtime hours worked. Based on information and belief, DEFENDANTS
27 engaged in similar time-shaving practices with respect to other Aggrieved Employees by rounding
28 the total hours worked of other Aggrieved Employees to the nearest quarter, half, and/or whole hour,

1 resulting in the underpayment of wages owed to Aggrieved Employees. DEFENDANTS' failure
2 to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of
3 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
4 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
5 forty (40) hours in a week.

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

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

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

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

26 40. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
27 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
28 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty

1 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
2 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
3 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
4 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
5 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
6 completely.

7 41. Based on information and belief, other Aggrieved Employees were consistently
8 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
9 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
10 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
11 the need to meet DEFENDANTS' goals and expectations. For example, on information and belief,
12 PLAINTIFF was consistently forced to take a late, shortened and/or interrupted meal period due to
13 the need to pick orders, keep up with production scheduling and/or complete other work tasks, At
14 times, PLAINTIFF could not take his meal period until after the seventh hour of work due to the
15 need to pick orders, keep up with production scheduling and/or complete other work tasks. Based
16 on information and belief, other Aggrieved Employees were consistently forced to take late,
17 shortened and/or interrupted meal periods due to the need to keep up with production scheduling,
18 pick or process orders and/or complete other work tasks.

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

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

26 44. Based on information and belief, despite DEFENDANTS' failure to provide lawful
27 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
28 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically

1 deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite
2 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did
3 not receive lawful meal periods.

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

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

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

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

23 49. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
24 additional hour of wages at their respective regular rates of compensation for each workday a lawful
25 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
26 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
27 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
28 bonuses, shift differential pay, multiple base rates of pay and/or other non-discretionary

1 compensation into the regular rate or compensation for purposes of calculating the owed meal period
2 premium.

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

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

11 **52.** Based on information and belief, DEFENDANTS did not have a have a compliant
12 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
13 practice. For example, PLAINTIFF was consistently forced to work through part or all of his rest
14 periods due to the need to pick orders, keep up with production scheduling and/or complete other
15 work tasks, Based on information and belief, other Aggrieved Employees were consistently forced
16 to work through part or all of their rest periods due to the need to keep up with production
17 scheduling, pick or process orders and/or complete other work tasks.

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

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

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

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

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

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

19 59. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
20 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
21 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
22 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
23 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
24 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
25 other off-the-clock work policies and practices) which results in a violation of Labor Code section
26 226(a).

27 60. 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, DEFENDANTS' wage statements issued to PLAINTIFF do not provide an accurate
3 overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage
4 statements provide at least two separate overtime pay rate categories (e.g., "Overtime-Hourly" and
5 "Sft 2 Prm Ot") with each providing an inaccurate overtime rate because rather than listing an
6 overtime rate that is one and one half times the regular rate of pay, DEFENDANTS' wage statements
7 list an overtime rate that is one and one half times the base rate of pay and a second overtime line
8 item that simply lists the shift pay differential for overtime hours worked. By way of illustration,
9 DEFENDANTS' issued wage statement to PLAINTIFF for pay period 11/21/21-12/4/21 shows two
10 overtime rate categories with each listing an inaccurate overtime rate of pay. The first category –
11 "Overtime-Hourly" – lists the overtime rate as \$27.75, or one- and one-half times PLAINTIFF's
12 base rate of pay of \$18.50. Then there is a separate overtime rate category "Sft 2 Prm Ot" identifying
13 the overtime pay rate as \$.75 per hour. As such, nowhere on the wage statement issued by
14 DEFENDANTS is there an accurate overtime rate listed for the overtime hours PLAINTIFF worked.
15 As such, PLAINTIFF and other Aggrieved Employees are unable to ascertain and/or are forced to
16 perform extensive calculation and/or use outside resources to determine what their pay rate was for
17 each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal.
18 2011). As described herein, based on information and belief, DEFENDANTS also failed to
19 incorporate all forms of non-discretionary compensation, including but not limited to, shift
20 differential pay, bonus/incentive pay and/or other non-discretionary remuneration earned during the
21 pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime
22 rate(s) for each hour of overtime worked by PLAINTIFF and other Aggrieved Employees.

23 61. Moreover, based on information and belief, DEFENDANTS issued wage statements
24 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
25 other things, failing to list the correct name and/or address of the legal entity that is the employer.
26 For example, various wage statements DEFENDANTS issued to PLAINTIFF list "Applied Medical
27 Resources Corporation" as the legal entity that is the employer. Other wage statements simply list
28 "Applied Medical" and/or the logo for "Applied Medical" as the name of the employer. Moreover,

1 documents contained in PLAINTIFF's personnel file, including without limitation, proprietary
2 agreement, other employment agreements and/or employment policies all identify "Applied
3 Medical Corporation" as the employer. As such, DEFENDANTS issued wage statements to
4 Aggrieved Employees that failed to list the correct name and/or address of the legal entity that is the
5 employer.

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

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

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

20 65. These violations subject DEFENDANTS to civil penalties under Labor Code section
21 203, 210, and/or 256.

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

28 67. Based on information and belief, DEFENDANTS shifted the costs of doing business

1 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
2 to, the use of Aggrieved Employees' personal mobile phone and data usage for work related
3 purposes to receive and respond to work related messages and/or phone calls. For example,
4 PLAINTIFF regularly received work-related emails from DEFENDANTS to his personal computer
5 and/or personal phone/mobile device regarding scheduling and/or other work tasks but was not
6 reimbursed at all for this business use of his personal device(s) nor was he reimbursed for home
7 internet charges, home electricity, and/or similar expenses incurred as a result of being required to
8 perform work remotely/at home. Based on information and belief, other Aggrieved Employees were
9 also required to use their personal cell phones and/or personal computers for business purposes
10 without receiving any or full reimbursement from DEFENDANTS for the costs associated
11 therewith.

12 68. Based on information and belief, Aggrieved Employees were also required to
13 purchase and/or maintain work uniforms/clothing, including but not limited to, steel-toed
14 shoes/boots, goggles/glasses, and/or gloves, without receiving any and/or full reimbursement from
15 DEFENDANTS for the expenses incurred in connection therewith.

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

21 70. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
22 for all reasonable expenses associated with carrying out their duties required that Aggrieved
23 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
24 2802.

25 71. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
26 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
27 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.
28

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

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

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

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

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

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

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

24 77. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
25 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
26 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
27 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
28 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and

1 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
2 Aggrieved Employee, results in a separate civil penalty.

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

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

17 80. **Failure to Produce Records.** Based on information and belief, DEFENDANTS fail
18 to timely produce or make available a current or former employee's personnel records and/or payroll
19 records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable
20 Wage Order. For example, PLAINTIFF, through counsel, sent a written request for time, payroll,
21 and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to timely produce complete
22 records within the time periods delineated by California labor law. Based on information and belief,
23 DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records
24 when requested by other Aggrieved Employees, resulting in violations of Labor Code sections
25 226(b)-(c), 1198.5, and 432 and the applicable Wage Order.

26 81. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
27 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
28 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the

1 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
2 accrued sick leave hours on the correct number of hours worked (as a result of the
3 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
4 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
5 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
6 not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate
7 compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

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

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

26 85. As such, DEFENDANTS have violated California's paid sick leave laws and
27 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
28 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These

1 unlawful practices and policies violate Labor Code sections 245-248.5.

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

7 87. **Unlawful Deductions:** Labor Code section 221 prohibits an employer from
8 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
9 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
10 from Aggrieved Employees paychecks during the relevant period, including but not limited to,
11 deducting costs advanced by DEFENDANTS from Aggrieved Employees’ final paychecks and/or
12 deductions for purported overpayments from prior pay periods and/or for uniforms and/or
13 deductions for negligently broken/damaged company property. Such a practice is in violation of
14 including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil
15 penalties under Labor Code Section 2699.

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

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

1 90. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
2 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, seating,
3 and unreimbursed business expenses result in separate violations of sections 1198 and 1199.

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

9 92. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

10 Unlawful Financial and Criminal Background Checks.

11 93. Based on information and belief, DEFENDANTS required Aggrieved Employees to
12 agree in writing to unlawful conditions of employment including but not limited to unlawful
13 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
14 violation of Labor Code section 432.5.

15 94. Based on information and belief, DEFENDANTS ordered unlawful financial credit
16 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
17 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
18 employment, in violation of California and Federal law, which results in a further violation of Labor
19 Code section 432.5.

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

25 96. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 agree in writing to a background check which failed to abide by the requirements set forth in CA
27 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
28 failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all),

1 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
2 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
3 failing to provide a way by which the individual could request a copy of the report, failing to disclose
4 the name, address, and telephone number of the third party preparing the report, and failing to
5 properly obtain authorization or consent to such a background check, and thus was an unlawful
6 background check.

7 97. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
8 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
9 section 432.5.

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

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

18 100. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
19 condition of employment, DEFENDANTS violated Labor Code section 432.5.

20 Unlawful Inquires into Criminal History

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

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

1 application in violation of California law, and in violation of Labor code section 432.5.

2 103. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
3 engaged in these same herein described unlawful practices, which led to violations of the California
4 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
5 unlawful practices to all of its employees that it applied to PLAINTIFF.

6 **FIRST CAUSE OF ACTION**
7 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
8 **2698, *ET SEQ.***
9 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all**
10 **Defendants)**

11 104. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

12 **Failure to Keep Accurate Records**

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

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

22 107. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
23 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
24 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
25 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
26 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
27 period during which the referenced statutes and Wage Order provisions were violated.²

28 ² 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 “in 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

1 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432.**

2 108. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
3 Orders, section 7 require that employers keep the following information on file for each employee
4 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
5 and the corresponding number of hours worked by the employee at each hourly rate, when the
6 employee begins and ends each work period (including meal periods) and split intervals; total hours
7 worked by the employee; all deductions; gross wages earned; and net wages earned.

8 109. Section (b) of Labor Code section 226 further requires employers to "afford current
9 and former employees the right to inspect or receive a copy of records pertaining to their
10 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
11 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
12 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
13 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
14 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
15 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
16 the employer. Lab. Code section 226(f).

17 110. Personnel Records. In addition to their right to time and pay records, employees, and
18 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
19 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
20 section 432 further specifies that employers must furnish copies of all employment records bearing
21 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
22 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
23 from the date the employer receives a written request." An employer's failure to comply within this
24 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
25 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

26 111. Based on information and belief, DEFENDANTS fail to produce or make available
27

28 _____ 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 Aggrieved Employees' personnel records time and/or pay records when requested pursuant to Labor
2 Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
3 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

4 **Meal Period Violations**

5 112. California law requires employers to provide employees a duty-free, uninterrupted
6 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
7 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
8 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
9 *Court* (2012) 53 Cal.4th 1004.

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

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

26 115. Employers must pay employees an additional hour of wages at the employees'
27 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
28 meal period, first meal period provided after five (5) hours, second meal period provided after 10

1 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
2 provide an employee a meal period in accordance with the applicable provision of this Order, the
3 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
4 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

5 116. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
6 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
7 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
8 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
9 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
10 periods completely.

11 117. Based on information and belief, DEFENDANTS had and continue to have a policy
12 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty
13 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
14 Aggrieved Employees did not receive compliant meal periods.

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

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

21 120. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
22 periods in violation of California law and/or failed to pay the proper meal period premium for failure
23 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
24 differential pay and/or other non-discretionary compensation into the regular rate or compensation
25 for purposes of calculating the owed meal period premium.

26 121. These unlawful meal period policies and practices result in violations of Labor Code
27 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
28 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable

1 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
2 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

3 **Rest Period Violations**

4 122. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
5 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
6 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
7 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
8 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
9 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
10 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
11 1029). The rest period requirement obligates employers to permit and authorize employees to take
12 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
13 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
14 257. If the employer fails to provide any required rest period, the employer must pay the employee
15 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
16 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
17 applicable IWC Wage Order, §12(B).

18 123. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
19 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
20 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
21 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
22 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
23 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

3 126. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
4 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
5 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
6 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
7 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
8 the regular rate of compensation for purposes of determining the owed rest period premium.

9 127. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
10 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
11 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

12 **Minimum and Overtime Wage Violations**

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

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

26 130. As explained above, DEFENDANTS violated California's minimum wage and
27 overtime wage laws by failing to compensate PLAINTIFF and Aggrieved Employees for all hours
28 worked by virtue of, among other things, DEFENDANTS' time rounding, automatic deduction for

1 meal periods, off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift
2 and/or otherwise off-the-clock work, and/or payment according to scheduled hours worked rather
3 than actual hours worked (described above), which resulted in the failure to account for all hours
4 worked and thus the denial of minimum and overtime wages.

5 131. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
6 Aggrieved Employees for all hours worked.

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

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

17 134. 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.

24 135. 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.
28

1 **Statutory Wage Violations**

2 136. 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**

14 137. 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.³

22 **Unlawful Deductions**

23 138. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
24 an employee any part of wages theretofore paid by said employer to said employee." Based on
25 information and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees'

26 _____
27 ³ 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 paychecks during the relevant period, including but not limited to, deducting costs advanced by
2 DEFENDANTS from Aggrieved Employees' final paychecks and/or deductions for purported
3 overpayments from prior pay periods and/or deductions for uniforms/protective equipment and/or
4 negligently broken/damaged company property. Such a practice is in violation of including but not
5 limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under
6 Labor Code Section 2699.

7 **Business Expense Violations**

8 139. California law requires employers to indemnify their employees for all necessary
9 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
10 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
11 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
12 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
13 incurred by the employee enforcing the rights granted by this section."

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

20 141. Further, "any contract or agreement, express or implied, made by any employee to
21 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
22 any employee or his personal representative of any right or remedy to which he is entitled to under
23 the laws of this State." *See* Cal. Lab. Code section 2804.

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

26 143. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

2 144. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
3 Employees have suffered injury in that they were not completely reimbursed as mandated by
4 California law.

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

9 **Wage Statement Violations**

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

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

1 148. As explained above, wage statements issued by DEFENDANTS failed to list the
2 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
3 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
4 employer control during unpaid meal periods, payment according to scheduled hours worked rather
5 than actual hours worked, and/or other off-the-clock work policies and practices all described in
6 greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all
7 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section
8 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

12 150. Separately, and independent from the above allegations, DEFENDANTS issued
13 wage statements to PLAINTIFF and Aggrieved Employees that violate Labor Code section
14 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the employer.

15 151. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
16 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
17 Employees over whether they received all wages owed to them.

18 152. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
19 they could not easily determine whether they received all wages owed to them and whether they
20 were paid for all hours worked.

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

24 154. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
25 Aggrieved Employees with accurate, itemized wage statements.

26 155. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Aggrieved
27 Employees have suffered injury. The absence of accurate information on their wage statements has
28 prevented earlier challenges to DEFENDANTS’ unlawful pay practices, will require discovery and

1 mathematical computations to determine the amount of wages owed, and will cause difficulty and
2 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
3 submission of inaccurate information about wages and amounts deducted from wages to state and
4 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
5 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
6 and pay records than if DEFENDANT had complied with its legal obligations.

7 156. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
8 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
9 during which the statute provisions were violated. ⁴

10 **Seating Violations**

11 157. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
12 provided with suitable seats when the nature of the work reasonably permits the use of seats and
13 when they are not actively engaged in the work duties that would not permit them to be seated.?

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

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

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

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

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

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation")

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

6 164. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
7 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
8 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
9 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
10 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
11 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
12 Aggrieved Employee, results in a separate civil penalty.

13 **Standard Conditions of Labor Violations**

14 165. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
15 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
16 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
17 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
18 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
19 suitable seating, and minimum/overtime wages result in separate violations of sections 1198 and
20 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

21 **Sick Leave Violations**

22 166. DEFENDANTS violated California's paid sick leave laws including, Labor Code
23 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
24 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
25 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
26 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
27 not limited to, non-discretionary bonuses, shift differential pay, multiple base rates of pay,
28 commission and/or piece-rate compensation and/or other non-discretionary compensation into the

1 sick leave pay rate calculation.

2 167. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
3 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
4 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
5 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
6 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

11 169. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
12 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
13 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
14 were entitled to the maximum number of hours accruable.

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

20 171. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

21 172. On information and belief, PLAINTIFF alleges that all of these practices were
22 experienced and continue to be experienced by other Aggrieved Employees.

23 173. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
24 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
25 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

27 174. 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.

5 175. 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**

11 176. 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."

18 177. 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).

24 178. 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.

2 179. 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.

6 180. 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**

10 181. *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.

15 182. 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.

27 183. 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.

3 184. Based on information and belief, DEFENDANTS required Aggrieved Employees to
4 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
5 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

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

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

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

16 Unlawful Inquires into Criminal History

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

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

26 190. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
27 Code section 432.7. By asking about convictions at the application phase or prior to extending an
28 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated

1 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
2 disclose arrests and/or convictions as a condition of employment.

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

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

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

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

18 192. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
19 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 20, 2022

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
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EXHIBIT

1



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October 13, 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:

Sheri Dando,
Agent for Service of Process for:
Applied Medical Resources Corporation
22872 Avenida Empresa
Rancho Santa Margarita, CA 92688

Applied Medical Resources Corporation
Attn: Human Resources/ Legal Department
22872 Avenida Empresa
Rancho Santa Margarita, CA 92688

Sheri Dando,
Agent for Service of Process for:
Applied Manufacturing, LLC
22872 Avenida Empresa
Rancho Santa Margarita, CA 92688

Applied Manufacturing, LLC
Attn: Human Resources/Legal Dept.
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Rancho Santa Margarita, CA 92688

Sheri Dando
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Sheri Dando,
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**Applied Medical Distribution
Corporation**
22872 Avenida Empresa
Rancho Santa Margarita, CA
92688

**Applied Medical Distribution
Corporation**
Attn: Human Resources/Legal
Dept.
22872 Avenida Empresa
Rancho Santa Margarita, CA
92688

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Applied Medical
Resources Corporation; Applied Medical Corporation; Applied Medical
Distribution Corporation; and Applied Manufacturing, LLC
Date: October 13, 2022
Subject: *Cuong Nguyen v. Applied Medical Resources Corporation, et. al.*

Introduction

This office represents COMPLAINANT, Cuong Nguyen (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: Applied Medical Resources Corporation; Applied Medical Corporation; Applied Medical Distribution Corporation; and Applied Manufacturing, LLC (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, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

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

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 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 a medical device manufacturing business with its global headquarters located in Rancho Santa Margarita, California.¹ EMPLOYER owns, operates or otherwise manages several plants, facilities, and/or locations in California, including but not limited to, facilities in Rancho Santa Margarita, California, Lake Forest, California, and Irvine California. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a material handler or similar title from in or around July 2021 through in or around late November 2021. COMPLAINANT worked for EMPLOYER out of EMPLOYER's location in Rancho Santa Margarita, California. COMPLAINANT regularly worked at least ten (10) hours per day, at least (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

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

¹ <https://www.appliedmedical.com/WhoWeAre> (Last Visited on October 13, 2022)

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 (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

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

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

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

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

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

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

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

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

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

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

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

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the

employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, on information and belief, COMPLAINANT was consistently forced to take a late, shortened and/or interrupted meal period due to the need to pick orders, keep up with production scheduling and/or complete other work tasks. At times, COMPLAINANT could not take his meal period until after the seventh hour of work due to the need to pick orders, keep up with production scheduling and/or complete other work tasks. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently forced to take late, shortened and/or interrupted meal periods due to the need to keep up with production scheduling, pick or process orders and/or complete other work tasks.

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

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

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

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

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second

legally compliant thirty (30) minute second meal break. For example, based on information and belief, when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES worked more than ten hours in a shift, they did not receive a second meal period.

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

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

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

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

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

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").

compliant rest period policy in practice. For example, COMPLAINANT was consistently forced to work through part or all of his rest periods due to the need to pick orders, keep up with production scheduling and/or complete other work tasks, Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently forced to work through part or all of their rest periods due to the need to keep up with production scheduling, pick or process orders and/or complete other work tasks.

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

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not provided with any form of a third rest period when working 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, 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 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,

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”).

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. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to stand in line behind other employees to access EMPLOYER's electronic time-keeping system and/or were required to undergo security screenings and/or had to spend time reinitiating EMPLOYER's time-keeping system before they could clock in for the start of their shifts. This off-the-clock pre-shift work, including but not limited to, time spent waiting for other employees to clock in for their shifts, undergoing security screenings and/or reinitiating the time-keeping mechanism, was not compensated, resulting in the underpayment of minimum and overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment, safety equipment and/or uniforms (e.g., safety goggles/glasses and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift. Based on information and belief, EMPLOYER had a uniform policy and practice of prohibiting NON-EXEMPT AGGRIEVED EMPLOYEES from clocking in prior to their scheduled shift start times while requiring that they consistently perform pre-shift off-the-clock work that was neither recorded nor compensated.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in the underpayment of minimum and overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on further information and belief, EMPLOYER's electronic employee time-keeping system at times malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were 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 NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's 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 required to complete off-the-clock work outside of scheduled shifts due to work-related emails / messages / calls they received to their personal phones and/or personal

computers/mobile devices and were required to review and/or respond to outside of their scheduled shift times, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in significant off-the-clock work.

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. For example, COMPLAINANT's wage statements show that EMPLOYER regularly rounded COMPLAINANT's total hours worked to the nearest quarter, half, or whole hour, which resulted in shaving off compensable work time and failing to pay COMPLAINANT for all hours worked. By way of illustration, EMPLOYER's wage statement issued to COMPLAINANT for pay period starting 10/10/21 and ending 10/23/21 shows COMPLAINANT's hours rounded to exactly 72.00 regular hours worked and exactly 18.00 overtime hours worked; similarly, EMPLOYER's issued wage statement to COMPLAINANT for pay period starting 10/24/21 and ending 11/6/21 shows exactly 72.00 regular hours worked and exactly 24.50 overtime hours worked. Based on information and belief, EMPLOYER engaged in similar time-shaving practices with respect to other NON-EXEMPT AGGRIEVED EMPLOYEES by rounding the total hours worked of other NON-EXEMPT AGGRIEVED EMPLOYEES to the nearest quarter, half, and/or whole hour, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. 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 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 pay, multiple base rates of

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").

pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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.

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

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 “in 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”).

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.

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).

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

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).

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.

Based on information and belief, wage statements issued by EMPLOYER failed to list 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). For example, EMPLOYER's wage statements issued to COMPLAINANT do not provide an accurate overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage statements provide at least two separate overtime pay rate categories (e.g., "Overtime-Hourly" and "Sft 2 Prm Ot") with each providing an inaccurate overtime rate because rather than listing an overtime rate that is one and one half times the regular rate of pay, EMPLOYER's wage statements list an overtime rate that is one and one half times the base rate of pay and a second overtime line item that simply lists the shift pay differential for overtime hours worked. By way of illustration, EMPLOYER's issued wage statement to COMPLAINANT for pay period 11/21/21-12/4/21 shows two overtime rate categories with each listing an inaccurate overtime rate of pay. The first category – "Overtime-Hourly" – lists the overtime rate as \$27.75, or one- and one-half times COMPLAINANT's base rate of pay of \$18.50. Then there is a separate overtime rate category "Sft 2 Prm Ot" identifying the overtime pay rate as \$.75 per hour. As such, nowhere on the wage statement issued by EMPLOYER is there an accurate overtime rate listed for the overtime hours COMPLAINANT worked. As such, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are unable to ascertain and/or are forced to perform extensive calculation and/or use outside resources to determine what their pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation, including but not limited to, shift differential pay, bonus/incentive pay and/or other non-discretionary remuneration 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, various wage statements EMPLOYER issued to COMPLAINANT list “Applied Medical Resources Corporation” as the legal entity that is the employer. Other wage statements simply list “Applied Medical” and/or the logo for “Applied Medical” as the name of the employer. Moreover, documents contained in COMPLAINANT’s personnel file, including without limitation, proprietary agreement, other employment agreements and/or employment policies all identify “Applied Medical Corporation” as the employer. As such, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that failed to list the correct name and/or address of the legal entity that is the employer.

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

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

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

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

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

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be

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

permitted to use such seats when it does not interfere with the performance of their duties.

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

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

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, suitable seating, 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.

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period, including but not limited to, deducting costs advanced by EMPLOYER

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES' final paychecks and/or deductions for purported overpayments from prior pay periods and/or for uniforms and/or deductions for negligently broken/damaged company property. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. 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 Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

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).

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

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.”

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

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. 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 and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing. For example, COMPLAINANT regularly received work-related emails from EMPLOYER to his personal computer and/or personal phone/mobile device regarding scheduling and/or other work tasks but was not reimbursed at all for this business use of his personal device(s) nor was he reimbursed for home internet charges, home electricity, and/or similar expenses incurred as a result of being required to perform work remotely/at home. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were also required to use their personal cell phones and/or personal computers for business purposes without receiving any or full reimbursement from EMPLOYER for the costs associated therewith.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also required to purchase and/or maintain work uniforms/clothing, including but not limited to, steel-toed shoes/boots, goggles/glasses, and/or gloves, without receiving any and/or full reimbursement from EMPLOYER for the expenses incurred in connection therewith.

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 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