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all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

GINA SANTOS on behalf of herself, all
others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

SALOOJAS, INC. DBA AFC URGENT
CARE; and DOES 1-100,

Defendants.

Case No. 23CV032233

**PLAINTIFF GINA SANTOS'S PRIVATE
ATTORNEYS GENERAL ACT OF 2004 ("PAGA")
COMPLAINT FILED PURSUANT TO
CALIFORNIA LABOR CODE § 2698, ET. SEQ.**

- 1. Violation of the PAGA for Failure to Pay All Straight Time Wages;**
- 2. Violation of the PAGA for Failure to Pay All Overtime Wages;**
- 3. Violation of PAGA for Failure to Provide Meal Periods;**
- 4. Violation of PAGA for Failure to Provide Rest Periods;**
- 5. Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;**
- 6. Violation of the PAGA for Failure to Pay All Wages Due at the Time of Termination of Employment; and**
- 7. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy and Failure to Provide Written Notice Setting Forth Amount of Sick Leave Available.**

DEMAND FOR JURY TRIAL

1 Plaintiff GINA SANTOS (hereinafter referred to as “Plaintiff” or “Ms. Santos”), on behalf
2 herself and all other non-exempt, hourly employees who worked in California (hereinafter referred to
3 as the “Aggrieved Employees”), files this Complaint against Defendant SALOOJAS, INC. DBA AFC
4 URGENT CARE (hereinafter referred to as “AFC URGENT CARE” or “Defendant”) and/or DOES
5 1-100.

6 **I. INTRODUCTION**

7 1. This is a representative action seeking recovery of penalties under the California Labor Code
8 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et.
9 seq., against AFC URGENT CARE and/or DOES 1-100. The PAGA permits an “aggrieved
10 employee” to bring a lawsuit on behalf of herself and other current and former employees to
11 address an employer’s violations of the *California Labor Code*.

12 2. AFC URGENT CARE operates a medical care facility.

13 3. AFC URGENT CARE’s headquarters is in Newark, California which is in Alameda County.

14 4. AFC URGENT CARE operates out of at least one location in California.

15 5. AFC URGENT CARE employs hourly, non-exempt employees to work in its facilities and
16 perform and assist with medical care such as providing physicals and routine check-ups,
17 administering flu shots and other vaccinations, performing lab testing, and taking X-rays.

18 6. AFC URGENT CARE has maintained uniform policies that violate the wage and hour rights
19 of Plaintiff and similarly situated non-exempt employees in the manner complained of herein.

20 7. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of AFC
21 URGENT CARE and/or DOES who: worked a shift of at least five (5) hours without receiving
22 a meal period; worked four (4) hours, or a major fraction thereof, without receiving a ten (10)
23 minute net rest break; were not provided accurate itemized wage statements; were not paid
24 compensation for all time worked at the straight or overtime rate; were not paid waiting time
25 penalties; were not provided with sick pay in compliance with California law; and were not
26 provided with written notices setting forth the amount of sick leave available. Plaintiff seeks
27 penalties on behalf of herself and all other Aggrieved Employees of Defendant and/or DOES
28 as provided herein. This Complaint also seeks attorneys’ fees and costs under the PAGA,

1 *California Labor Code* section 2699(g)(1).

2 8. At all times mentioned herein, Plaintiff and the other Aggrieved Employees were not classified
3 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
4 Thus, under California law, Plaintiff and the Aggrieved Employees should be: paid
5 compensation for all time worked at the regular or overtime rate; provided meal periods;
6 authorized and permitted to take rest periods; paid one hour of premium pay for all unprovided
7 meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or
8 permitted; paid penalties for not being provided itemized wage statements; paid penalties for
9 not being paid timely at the time of termination; and provided with sick pay in compliance
10 with California law.

11 9. At all times mentioned herein, AFC URGENT CARE and/or DOES control the working
12 conditions of Plaintiff and the Aggrieved Employees including, but not limited to, having the
13 authority to hire and fire Plaintiff and the Aggrieved Employees, setting the wages of Plaintiff
14 and the Aggrieved Employees, and instructing Plaintiff and the Aggrieved Employees when
15 and/or where to work. In addition, AFC URGENT CARE and/or DOES develop, wrote,
16 dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and
17 the Aggrieved Employees labored under. These policies and/or practices included, but were
18 not limited to, policies and/or practices regarding straight-time, overtime, meal periods, rest
19 periods, wage statements, timing of payment, paying compensation at the time of termination,
20 and sick pay/paid time off. Further, AFC URGENT CARE and/or DOES have the ability to
21 prevent Plaintiff and the Aggrieved Employees from working.

22 **II. JURISDICTION AND VENUE**

23 10. Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff was
24 employed by AFC URGENT CARE and/or DOES in California. Plaintiff, and each of the
25 Aggrieved Employees, were employees of AFC URGENT CARE and/or DOES, and/or its
26 operating divisions and subsidiaries, within the State of California. Plaintiff and each of the
27 Aggrieved Employees were subject to the unlawful policies beginning one (1) year prior to the
28 date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency

1 (LWDA).

2 11. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
3 and/or DOE operate industrial facilities, employ hourly employees, conduct business, and
4 commit *California Labor Code* violations within Alameda County and California. Each
5 Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes.
6 The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved
7 employees situated within the State of California and within Alameda County. AFC URGENT
8 CARE and/or DOES employ numerous aggrieved employees in California and/or Alameda
9 County.

10 12. Plaintiff brings this action on behalf of herself and the Aggrieved Employees of AFC
11 URGENT CARE and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of
12 the general public, will and does seek to recover any and all penalties for each and every
13 violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed
14 Notice with the LWDA of her intent to bring this action, in an amount according to proof, as
15 to those penalties that are otherwise only available to public agency enforcement
16 actions. Funds recovered will be distributed in accordance with the PAGA, with at least
17 seventy-five (75) percent of the penalties recovered being reimbursed to the State of California
18 and the LWDA.

19 13. There is no federal question at issue as the issues herein are based solely upon California
20 statutes and law, including the *California Labor Code*, IWC Wage Orders, Code of Civil
21 Procedure, and Civil Code.

22 14. The California Superior Court also has jurisdiction in this matter because the penalties sought
23 exceed the minimum jurisdictional limits of the Superior Court and will be established at trial,
24 according to proof. Defendant and/or DOES either own, maintain offices, transact business,
25 have an agent or agents, have their principal place of business in, and/or otherwise are found
26 within the County of Alameda, California.

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1 **III. THE PARTIES**

2 **A. Plaintiffs**

3 15. Throughout the Statutory Period, Plaintiff GINA SANTOS is and was a resident of California.
4 During the Statutory Period, Plaintiff GINA SANTOS was employed in a non-exempt capacity
5 by Defendant AFC URGENT CARE and/or DOES in California. Plaintiff GINA SANTOS’
6 employment with Defendant AFC URGENT CARE and/or DOES ended on or about February
7 3, 2023.

8 16. Plaintiff and the Aggrieved Employees were and are employed in the State of California by
9 AFC URGENT CARE and/or DOES. Plaintiff and the Aggrieved Employees are or were
10 employed in a non-exempt, hourly capacity.

11 17. A notice correspondence showing compliance with *California Labor Code* Section 2699.3 was
12 sent to the LWDA and AFC URGENT CARE on February 13, 2023. This notice demonstrates
13 that Plaintiff is an aggrieved employee and has standing to bring a representative action on
14 behalf of the LWDA and as a private attorney general. The violations alleged in this notice
15 also form the basis for the allegations herein. No notice of cure by Defendant AFC URGENT
16 CARE and/or DOES was provided and no notice of investigation was received from the
17 LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice
18 of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized
19 by *California Labor Code* section 2699.3(a)(2)(C).

20 **B. Defendants**

21 18. AFC URGENT CARE operates a medical care facility.

22 19. AFC URGENT CARE’s headquarters is in Newark, California which is in Alameda County.

23 20. AFC URGENT CARE operates out of at least one location in California.

24 21. AFC URGENT CARE employs hourly, non-exempt employees to work in its facilities and
25 perform and assist with medical care such as providing physicals and routine check-ups,
26 administering flu shots and other vaccinations, performing lab testing, and taking X-rays.

27 22. AFC URGENT CARE employed Plaintiff and similarly situated hourly non-exempt
28 employees to work at its locations in California.

23. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

24. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

25. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

26. During all, or a portion, of the one (1) year period before Plaintiff filed notice of her claims with the LWDA, Plaintiff and each of the Aggrieved Employees were employed by AFC URGENT CARE and/or DOES in the State of California. Plaintiff and the Aggrieved Employees are composed of all current and former non-exempt, hourly employees of AFC URGENT CARE and/or DOES within the State of California.

27. At all times mentioned herein, AFC URGENT CARE and/or DOES fail to pay Plaintiff and the Aggrieved Employees all straight time and overtime wages owed. For example, Ms. Santos and Aggrieved Employees are not paid for the time it takes them to turn on and boot up their computers before clocking in. In addition, Ms. Santos and Aggrieved Employees are not relieved of all duties during their meal periods.

28. At all times mentioned herein, AFC URGENT CARE and/or DOES fail to pay Plaintiff and the Aggrieved Employees for all time worked because AFC URGENT CARE and/or DOES

alter Ms. Santos' and the Aggrieved Employees' wage statements to deduct hours worked. For example, when Ms. Santos compared the time recorded in her time records with the total number of hours worked as itemized on her wage statements, she found her wage statements were missing several hours worked and recorded in her time records.

29. At all times mentioned herein, AFC URGENT CARE and/or DOES fail to pay Plaintiff and the Aggrieved Employees at the appropriate regular rate of pay for all hours worked. Specifically, AFC URGENT CARE and/or DOES fail to incorporate non-discretionary bonuses employees are paid into employees' regular rate of pay. For example, upon receiving positive online reviews employees are paid a non-discretionary, flat sum bonus. These bonuses are not included in employees' regular rate of pay.

30. At all times mentioned herein, AFC URGENT CARE and/or DOES fail to provide Plaintiff and the Aggrieved Employees with meal periods that comply with California law and fail to authorize and permit rest periods that comply with California law.

31. At all times mentioned herein, AFC URGENT CARE and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

32. At all times mentioned herein, AFC URGENT CARE and/or DOES require Plaintiff and the Aggrieved Employees to work through their meal periods thereby denying Plaintiff and the Aggrieved Employees of the right to be completely free from employer control under California law.

33. At all times mentioned herein, Plaintiff and the Aggrieved Employees are not free of all work duties and/or employer control during meal periods.

34. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all Aggrieved Employees, and by failing to provide compensation for these unprovided meal periods, AFC URGENT CARE and/or DOES willfully violate the provisions of Labor Code section 226.7, IWC Wage Order

No. 4-2001, and California Code of Regulations, Section 11040(11). In addition, AFC URGENT CARE and/or DOES fail to provide Plaintiff and the Aggrieved Employees with another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

35. At all times mentioned herein, AFC URGENT CARE and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the Aggrieved Employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.

36. At all times mentioned herein, AFC URGENT CARE and/or DOES breach the legal duty to provide rest periods to employees by imposing a continuous and consistent policy requiring Plaintiff and all Aggrieved Employees to keep working during their rest periods, thereby denying Plaintiff and all Aggrieved Employees of the right to be completely free from employer control under California law.

37. At all times mentioned herein, Plaintiff and the Aggrieved Employees are not free of all work duties and/or employer control during rest periods.

38. By failing to provide paid net ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all Aggrieved Employees and by failing to provide compensation for these periods, AFC URGENT CARE and/or DOES willfully violate the provisions of Labor Code section 226.7, IWC Wage Order No. 4-2001, and California Code of Regulations, Section 11040(12).

39. At all times mentioned herein, AFC URGENT CARE and/or DOES knowingly and intentionally provide wage statements to employees that fail to specifically itemize everything required under *California Labor Code* section 226(a).

40. At all times mentioned herein, AFC URGENT CARE and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate pay statements in accordance with California law.

41. At all times mentioned herein, AFC URGENT CARE and/or DOES knew and/or should have

known that they were not providing complete and accurate pay statements in accordance with California law to Plaintiff and the Aggrieved Employees.

42. At all times mentioned herein, AFC URGENT CARE and/or DOES fail to pay all wages owed to Plaintiff and to other terminated or resigned Aggrieved Employees and failed to timely pay wages during employment.

43. At all times mentioned herein, AFC URGENT CARE and/or DOES knew and/or should have known that they had a duty to compensate Plaintiff and the Aggrieved Employees in accordance with California law, and that AFC URGENT CARE and DOES have the ability to pay such compensation, but willfully and intentionally failed to do so, and AFC URGENT CARE and DOES falsely represent to Plaintiff and the Aggrieved Employees that they were properly compensating Plaintiff and the Aggrieved Employees.

44. At all times mentioned herein, AFC URGENT CARE and/or DOES knowingly and intentionally fail to pay all wages owed to non-exempt, hourly employees in a timely manner at the time non-exempt, hourly employees terminated their employment – either voluntarily or involuntarily – with AFC URGENT CARE and/or DOES.

45. At all times mentioned herein, AFC URGENT CARE and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to timely wages at the time of termination. AFC URGENT CARE and/or DOES did not timely pay all wages owed, straight-time wages owed, overtime wages owed, meal period premiums, and rest period premiums owed at the time of termination.

46. At all times mentioned herein, AFC URGENT CARE and/or DOES fail to pay Plaintiff and the Aggrieved Employees a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

47. Plaintiff brings this action on behalf of herself and all Aggrieved Employees defined as all AFC URGENT CARE's non-exempt employees employed in California beginning one year prior to the date Plaintiff sent notice to the LWDA.

48. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with respect to the issues or in any other way.

FIRST CAUSE OF ACTION AGAINST AFC URGENT CARE AND/OR DOES: Violation of the PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).

49. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

50. AFC URGENT CARE and/or DOES have had a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked.

51. It is fundamental that an employer must pay its employees for the time worked. *California Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* sections 1194 – 1197.1 prohibit the payment of less than the minimum wage. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not in effect reduce the agreed upon wage.

52. Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

53. AFC URGENT CARE and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked. Defendant and/or DOES have not paid for all the time Plaintiff and the Aggrieved Employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, during meal periods, and/or any other time in the day during which employees were subject to the control of Defendant and/or DOES and/or performing work tasks or otherwise had work duties during periods of time for which Defendant and/or DOES are not paying them. For example, Plaintiff and the Aggrieved Employees are not paid for the time it takes them to turn on and boot up their computers before clocking in. In addition, Plaintiff and the Aggrieved Employees are not relieved of all duties

1 during their meal periods. AFC URGENT CARE's and/or DOES' failure to pay for all hours
2 worked while under AFC URGENT CARE's control and/or while suffered or permitted to
3 work has resulted in Plaintiff and the Aggrieved Employees being deprived of straight time
4 wages throughout the relevant time period.

5 54. AFC URGENT CARE and/or DOES failed to pay for all time worked because AFC URGENT
6 CARE and/or DOES fail to pay Plaintiff and the Aggrieved Employees for all recorded hours
7 worked. Specifically, employees record their time through AFC URGENT CARE's and/or
8 DOES' TimeForge timekeeping system. Yet, the hours employees log in TimeForge are
9 greater than what is reflected on Plaintiff's and the Aggrieved Employees' wage statements.
10 Stated differently, Plaintiff and the Aggrieved Employees are not paid for all of the hours
11 Plaintiff and the Aggrieved Employees record in TimeForge. When Plaintiff compares her
12 hours worked in TimeForge to her wage statements, TimeForge reflects more hours worked
13 during the pay period than appear on her wage statements. As such, Plaintiff and the Aggrieved
14 Employees are owed wages for the hours that they worked for which they were not paid.

15 55. Further, Plaintiff and the Aggrieved Employees are informed and believe and thereon allege
16 that AFC URGENT CARE and/or DOES breach the legal duty to pay full wages to Plaintiff
17 and the Aggrieved Employees by failing to pay employees for meal period time when
18 employees were not relieved of all duties and employer control as well as for time spent
19 performing work tasks and under AFC URGENT CARE's and/or DOES' control before
20 clocking-in and after clocking-out.

21 56. Defendant and/or DOES have a continuous and consistent policy of failing to pay full wages
22 to Plaintiff and the Aggrieved Employees by deducting a portion of the wages earned by
23 Plaintiff and the Aggrieved Employees when they worked through their meal periods, are not
24 relieved of all work duties during their meal periods and/or when AFC URGENT CARE
25 recorded a meal period for Plaintiff and the Aggrieved Employees when no meal period was
26 taken.

27 57. Defendant and/or DOES have a continuous and consistent policy of clocking-out Plaintiff and
28 those similarly situated for a thirty (30) minute meal period and/or otherwise recording a meal

period, even though Plaintiff and all Aggrieved Employees work through their meal periods and/or were subject to AFC URGENT CARE's control during meal periods. Thus, AFC URGENT CARE and/or DOES do not pay Plaintiff and each and every Aggrieved Employee for all time worked each and every day they work without a meal period and have time deducted.

58. Failing to pay for all hours worked while under AFC URGENT CARE's and/or DOES' control and/or while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees being deprived of straight time wages.

59. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

60. Plaintiff and the Aggrieved Employees were employed by AFC URGENT CARE and/or DOES at all relevant times. AFC URGENT CARE and/or DOES were required to compensate Plaintiff and the Aggrieved Employees for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

61. AFC URGENT CARE and/or DOES commit the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the Aggrieved Employees.

62. These claims are on behalf of Plaintiff and all non-exempt hourly employees employed by Defendant and/or DOES in California.

63. Plaintiff, as former "non-exempt" hourly employee of AFC URGENT CARE and/or DOES who AFC URGENT CARE and/or DOES fail to pay all wages. Therefore, Plaintiff is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

64. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and

1199.

65. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

66. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SECOND CAUSE OF ACTION AGAINST AFC URGENT CARE AND/OR DOES: Violation of the PAGA for Failure to Pay All Overtime Wages Owed

67. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

68. *California Labor Code* section 510 states that eight (8) hours of labor constitutes a day's work. Any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half (1.5) times the regular rate of pay for an employee.

69. *California Labor Code* section 510 dictates that any work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

70. AFC URGENT CARE and/or DOES fail to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week.

71. Defendant and/or DOES fails to pay for all time during which Plaintiff and Aggrieved Employees work throughout their shift. As most shifts worked are at least eight hours in length,

1 this time during which employees are uncompensated before clocking in and/or during meal
2 periods but under Defendant's control, should be, but was not, paid at the applicable overtime
3 rate.

4 72. AFC URGENT CARE and/or DOES have had a continuous policy of not paying Plaintiff and
5 those similarly situated for all hours worked. For example, AFC URGENT CARE and/or
6 DOES fail to pay for all time during which Plaintiff and Aggrieved Employees work
7 throughout their shift, such as the time when they have to turn on their computers and wait for
8 them to boot up before they can clock in, as well as time Plaintiff and Aggrieved Employees
9 are subject to AFC URGENT CARE's and/or DOES' control and performing work duties
10 when they are clocked out for meal periods. Plaintiff and Aggrieved Employees must be paid
11 for this time. When shifts lasted over eight hours in length, this time during which employees
12 are uncompensated before clocking in and during meal periods, should be, but was not, paid at
13 the applicable overtime rate.

14 73. AFC URGENT CARE and/or DOES fail to pay for all time worked because AFC URGENT
15 CARE and/or DOES fail to pay Ms. Santos and the Aggrieved Employees for all recorded
16 hours worked. Specifically, employees record their time through AFC URGENT CARE's
17 and/or DOES' TimeForge timekeeping system. Yet, the hours employees log in TimeForge
18 are greater than what is reflected on Ms. Santos' and Aggrieved Employees' wage statements.
19 Stated differently, Ms. Santos and the Aggrieved Employees are not paid for all of the hours
20 Ms. Santos and the Aggrieved Employees record in TimeForge. When Ms. Santos compares
21 her hours worked in TimeForge to her wage statements, TimeForge reflects more hours worked
22 during the pay period than appear on her wage statements. As such, Ms. Santos and the
23 Aggrieved Employees are owed wages for the hours that they worked for which they were not
24 paid. In shifts where Ms. Santos and the Aggrieved Employees worked overtime, these unpaid
25 wages should be paid at an overtime rate.

26 74. AFC URGENT CARE and/or DOES fail to pay Ms. Santos and the Aggrieved Employees at
27 the appropriate regular rate of pay for all overtime hours worked. Specifically, AFC URGENT
28 CARE and/or DOES fail to incorporate bonuses employees were paid when calculating

1 employees' regular rate of pay for purposes of paying overtime compensation. For example,
2 upon receiving positive online reviews employees are paid a non-discretionary, flat sum bonus.
3 These bonuses are not included in employees' regular rate of pay.

4 75. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
5 unpaid wages, and lost interest on such wages, and expenses.

6 76. These claims are on behalf of Plaintiff and all non-exempt employees employed by Defendant
7 and/or DOES in California.

8 77. Plaintiff, as a representative of the people of the State of California, will seek any and all
9 penalties otherwise capable of being collected by the Labor Commission and/or the
10 Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code*
11 section 510.

12 78. Plaintiff, as a representative of the people of the State of California, will seek all penalties
13 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
14 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
15 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
16 222, 223, and 510.

17 79. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
18 behalf of herself and the other Aggrieved Employees, seeks recovery of applicable civil
19 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
20 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
21 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
22 *California Labor Code* section 2699(f)(2).

23 80. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other Aggrieved
24 Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations
25 pursuant to this chapter or any provisions regulating hours and days of the week of the
26 Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

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THIRD CAUSE OF ACTION AGAINST AFC URGENT CARE AND/OR DOES: Violation of the PAGA for Failure to Provide Meal Periods (California Labor Code §2698 et. seq.).

81. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

82. Under *California Labor Code* section 512, and IWC Wage Order 4-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

83. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

84. Under *California Labor Code* section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, 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.

85. AFC URGENT CARE and/or DOES have a consistent policy and/or practice of not providing meal periods to Plaintiff and the Aggrieved Employees and/or providing compensation in lieu thereof.

86. AFC URGENT CARE and/or DOES have a consistent policy and/or practice of requiring Plaintiff and the Aggrieved Employees to work at least five (5) hours without a meal period and failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the meal period is not provided, or other compensation in lieu thereof, as required by California's state wage and hour laws.

87. In addition, AFC URGENT CARE and/or DOES breach the legal duty to provide meal periods

1 to employees by imposing a continuous and consistent policy requiring Plaintiff and the
2 Aggrieved Employees to work through their meal periods to satisfy the demanding workload
3 duties imposed by AFC URGENT CARE and/or DOES, thereby denying Plaintiff and the
4 Aggrieved Employees of the right to be completely free from employer control under
5 California law. Plaintiff and the Aggrieved Employees were not free of all work duties and/or
6 employer control during meal periods.

7 88. Throughout the statutory period, AFC URGENT CARE and/or DOES valued productivity over
8 providing meal periods and, because of this, meal breaks were not priorities to AFC URGENT
9 CARE and/or DOES.

10 89. AFC URGENT CARE and/or DOES have a consistent policy and/or practice of not providing
11 second meal periods to Plaintiff and the Aggrieved Employees and/or providing compensation
12 in lieu thereof. Specifically, Plaintiff and the Aggrieved Employees were not provided with
13 second meal periods when they worked ten (10) to twelve (12) hours.

14 90. By failing to provide statutory first and/or second meal periods, and by failing to provide
15 compensation for unprovided meal periods, as alleged above, AFC URGENT CARE and/or
16 DOES willfully violate the provisions of the *California Labor Code* section 226.7 and 512.

17 91. These claims are on behalf of Plaintiff and all non-exempt employees employed by Defendant
18 and/or DOES in California.

19 92. By failing to provide statutory first and/or second meal periods, and by failing to provide
20 compensation for unprovided meal periods, as alleged above, AFC URGENT CARE and/or
21 DOES willfully violate the provisions of *California Labor Code* sections 226.7 and 512, and
22 IWC Wage Order No. 4-2001.

23 93. As a result of the unlawful acts of AFC URGENT CARE and/or DOES, Plaintiff and the
24 Aggrieved Employees have been deprived of premium wages and/or other compensation in
25 amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest,
26 attorneys' fees, and costs.

27 94. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled
28 to work for a period of time in excess of six (6) hours were required to work for periods longer

- than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.
95. During the relevant time period, Plaintiff and the Aggrieved Employees who were scheduled to work for a period of time in excess of ten (10) hours and/or (12) hours, and who did not waive their legally-mandated meal periods by mutual consent were required to work in excess of ten (10) hours and/or twelve (12) hours without receiving a second uninterrupted meal period of not less than thirty (30) minutes.
96. During the relevant time period, AFC URGENT CARE and/or DOES fail to pay Plaintiff and the Aggrieved Employees the full meal period premium due pursuant to *California Labor Code* section 226.7.
97. AFC URGENT CARE's and/or DOES' conduct violates applicable IWC Wage Order 4-2001 and *California Labor Code* sections 226.7 and 512(a).
98. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an Aggrieved Employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 for violations of *California Labor Code* sections 226.7 and 512.
99. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.
100. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an Aggrieved Employee, on behalf of herself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).
101. In the alternative, Plaintiff, as an Aggrieved Employee, on behalf of herself and other

Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

FOURTH CAUSE OF ACTION AGAINST AFC URGENT CARE AND/OR DOES: Violation of the PAGA for Failure to Provide Rest Periods (*California Labor Code* §2698 et. seq.).

102. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

103. Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

104. At all times mentioned herein, AFC URGENT CARE and/or DOES fail to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

105. AFC URGENT CARE’s and/or DOES’ business model was such that Aggrieved Employees were assigned too much work that could not be reasonably completed within their assigned shift, resulting in Aggrieved Employees routinely and regularly being forced to work through their rest periods.

106. AFC URGENT CARE and/or DOES breach the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and non-exempt employees to work through their rest periods.

107. Throughout the statutory period, AFC URGENT CARE and/or DOES have a pattern and practice of assigning too much work to be completed in too short of time frames, resulting in Plaintiff and those similarly situated not to take rest periods.

108. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation for

1 these unprovided rest periods, as alleged above, AFC URGENT CARE and/or DOES willfully
2 violate the provisions of *California Labor Code* section 226.7.

3 109. These claims are on behalf of Plaintiff and all hourly non-exempt employees employed by
4 Defendant and/or DOES in California.

5 110. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
6 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
7 has satisfied all prerequisites to serve as a representative of the general public to enforce
8 California's labor laws, and the penalty provisions identified in *California Labor Code* section
9 2699.5 for violations of *California Labor Code* section 226.7.

10 111. Plaintiff, as a representative of the people of the State of California, will seek all penalties
11 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
12 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
13 that section 2699.3(a) applies to any alleged violation of the following provisions: section
14 226.7.

15 112. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an Aggrieved Employee, on
16 behalf of herself and the other Aggrieved Employees, seeks recovery of applicable civil
17 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
18 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
19 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
20 *California Labor Code* section 2699(f)(2).

21 113. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other Aggrieved
22 Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations
23 pursuant to this chapter or any provisions regulating hours and days of the week of the
24 Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

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FIFTH CAUSE OF ACTION AGAINST AFC URGENT CARE AND/OR DOES: Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et. seq.).

114. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

115. *California Labor Code* section 226(a) requires AFC URGENT CARE and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires AFC URGENT CARE and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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 the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

116. *California Labor Code* section 226(a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dates, showing the month, day and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

117. AFC URGENT CARE and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) on each and every wage statement provided to Plaintiff

- 1 and the Aggrieved Employees.
- 2 118. *California Labor Code* section 1174 requires AFC URGENT CARE and/or DOES to maintain
3 and preserve, in a centralized location, records showing the daily hours worked by and the
4 wages paid to its employees. AFC URGENT CARE and/or DOES have knowingly and
5 intentionally failed to comply with *California Labor Code* section 1174. The failure of AFC
6 URGENT CARE and/or DOES, and each of them, to comply with *California Labor Code*
7 section 1174 is unlawful pursuant to *California Labor Code* section 1175.
- 8 119. AFC URGENT CARE and/or DOES fail to maintain accurate time records - as required by
9 IWC Wage Order No. 4-2001(7), and *California Code of Regulations*, Title 8, section 11040 -
10 showing, among other things, when the employee begins and ends each work period, the total
11 daily hours worked in itemized wage statements, total wages, bonuses and/or incentives
12 earned, and all deductions made.
- 13 120. AFC URGENT CARE and/or DOES have knowingly and intentionally failed to provide
14 Plaintiff and the Aggrieved Employees with accurate itemized wage statements which show:
15 “(1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-
16 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4)
17 all deductions, provided that all deductions made on written orders of the employee may be
18 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
19 for which the employee is paid, (7) the name of the employee and only the last four digits of
20 his or her social security number or an employee identification number other than a social
21 security number, (8) the name and address of the legal entity that is the employer and, if the
22 employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
23 and address of the legal entity that secured the services of the employer, and (9) all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at
25 each hourly rate by the employee[.]” *California Labor Code* section 226(a).
- 26 121. AFC URGENT CARE and/or DOES knowingly and intentionally did not include the gross
27 wages earned on wage statements. AFC URGENT CARE therefore knowingly and
28 intentionally failed to itemize the gross wages earned on Plaintiff’s and the Aggrieved

- 1 Employees' wage statements.
- 2 122. In every pay period during the period of the relevant statute of limitations, AFC URGENT
3 CARE and/or DOES knowingly and intentionally did not itemize the total hours worked on
4 wage statements as *California Labor Code* section 226(a) requires. In every pay period during
5 the period of the relevant statute of limitations, AFC URGENT CARE and/or DOES
6 knowingly and intentionally did not include the total hours worked on wage statements.
7 Plaintiff and the Aggrieved Employees are not paid for the time it takes them to turn on and
8 boot up their computers before clocking in and for time spent on unpaid meal periods that were
9 not duty and control free. The hours worked do not include time Plaintiff and the Aggrieved
10 Employees spent performing work duties while off the clock. AFC URGENT CARE and/or
11 DOES therefore knowingly and intentionally failed to itemize the total hours worked on
12 Plaintiff's and the Aggrieved Employees' wage statements. Further, AFC URGENT CARE
13 and/or DOES also fails to pay for all time worked because AFC fails to pay Ms. Santos and
14 the Aggrieved Employees for all recorded hours worked. Specifically, employees record their
15 time through AFC's TimeForge timekeeping system. Yet, the hours employees log in
16 TimeForge are greater than what is reflected on Ms. Santos' and Aggrieved Employees' wage
17 statements. Stated differently, Ms. Santos and the Aggrieved Employees are not paid for all of
18 the hours Ms. Santos and the Aggrieved Employees record in TimeForge. When Ms. Santos
19 compares her hours worked in TimeForge to her wage statements, TimeForge reflects more
20 hours worked during the pay period than appear on her wage statements. As such, Ms. Santos
21 and the Aggrieved Employees are owed wages for the hours that they worked for which they
22 were not paid. As such, the itemized hours worked do not include all time Plaintiff and the
23 Aggrieved Employees spent performing work duties. AFC URGENT CARE and/or DOES
24 therefore knowingly and intentionally fail to itemize the total hours worked on Plaintiff's and
25 the Aggrieved Employees' wage statements.
- 26 123. Further, AFC URGENT CARE and/or DOES knowingly and intentionally did not include the
27 net wages earned on wage statements.
- 28 124. In addition, AFC URGENT CARE and/or DOES knowingly and intentionally did not itemize

- meal and rest period premiums owed to Plaintiff and the Aggrieved Employees on wage statements.
125. Section 246(i) of the *California Labor Code* states, “[a]n employer shall provide an employee with written notice that sets forth the amount of sick leave available, or paid time off an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”
126. AFC URGENT CARE and/or DOES fail to itemize sick leave available, or paid time off an employer provides in lieu of sick leave, for use on Plaintiff’s and the Aggrieved Employees’ itemized wage statements or in a separate writing provided on the designated pay date with the employee’s payment of wages.
127. In every pay period during the period of the relevant statute of limitations, AFC URGENT CARE and/or DOES knowingly and intentionally did not include the net wages earned on wage statements.
128. As a result of the knowing and intentional failure by AFC URGENT CARE and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the Aggrieved Employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.
129. These claims are on behalf of Plaintiff and all non-exempt employees employed by Defendant and/or DOES in California.
130. Plaintiff, as a non-exempt hourly employee who Defendants and/or DOES failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.
131. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides

that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

132. Pursuant to Labor Code section 2699(f), Plaintiff, as an Aggrieved Employee, on behalf of herself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

133. In the alternative, Plaintiff, as an Aggrieved Employee, on behalf of herself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (*California Labor Code* §2698 et. seq.).

134. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

135. AFC URGENT CARE and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to the Aggrieved Employees who left AFC URGENT CARE's and/or DOES' employ or who were terminated.

136. Aggrieved Employees who ended their employment with AFC URGENT CARE and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *California Labor Code* sections 201 through 203.

137. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee

has given seventy-two (72) hours' 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.

138. During the relevant time period, AFC URGENT CARE and/or DOES intentionally and willfully fail to pay Plaintiff and the Aggrieved Employees who are no longer employed by AFC URGENT CARE and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving AFC URGENT CARE's and/or DOES' employ.

139. Plaintiff's employment with AFC URGENT CARE and/or DOES was terminated on or about February 3, 2023. Yet, Plaintiff did not receive her final paycheck until the next regularly schedule pay date.

140. AFC URGENT CARE's and/or DOES' failure to pay Plaintiff and the Aggrieved Employees who are no longer employed by AFC URGENT CARE and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving AFC URGENT CARE's and/or DOES' employ, is in violation of *California Labor Code* sections 201 and 202.

141. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until and action is commenced; but the wages shall not continue for more than thirty (30) days.

142. AFC URGENT CARE and/or DOES fail to pay employees their final wages in accordance with *California Labor Code* sections 201 and 202 because AFC URGENT CARE and/or DOES pay employees their final wages on the next regularly scheduled pay date.

143. Plaintiff, as a non-exempt employee who AFC URGENT CARE and/or DOES fail to pay all wages, failed to provide a minimum statutory first and/or second meal periods, and failed to provide paid net ten (10) minute rest periods, is an Aggrieved Employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

144. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes

each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 201 through 203.

145. These claims are on behalf of Plaintiff and all non-exempt hourly employees employed by Defendant and/or DOES in California.

146. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

147. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and 558(a)(2).

SEVENTH CAUSE OF ACTION AGAINST AFC URGENT CARES AND/OR DOES:

Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Paid Sick Days and Failure to Provide Written Notice Setting Forth the Amount of Sick Leave Available (*California Labor Code* §2698 et. seq.).

148. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

149. Section 246(a)(1) of the *California Labor Code* states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

150. Section 246(c) of the *California Labor Code* states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

151. Section 233(c) of the *California Labor Code* states: “An employer shall not deny an employee

the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

152. Section 233(d) of the *California Labor Code* provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

153. Section 234 of the *California Labor Code* further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

154. Section 246.5 of the *California Labor Code* requires employers provide paid sick days for “[d]iagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee’s family member.”

155. Section 246(k) of the *California Labor Code* provides that, “[a]n employee may determine how much paid sick leave they need to use, provided that an employer may set a renewable minimum increment, not to exceed two hours, for the use of paid sick leave.”

156. AFC URGENT CARE and/or DOES fail to provide paid sick days in accordance with these provisions.

157. AFC URGENT CARE and/or DOES fail to provide paid sick days in accordance with these provisions. On at least one occasion, AFC provided a written warning to Ms. Santos for her lawful use of paid sick time used to care for the health of herself and/or her two children.

158. AFC URGENT CARE and/or DOES operate under an absence control policy that counts sick leave taken pursuant to Section 233 as an unauthorized absence that may result in discipline, discharge, demotion, or termination. Thus, AFC URGENT CARE and/or DOES’ sick pay policy punishes Plaintiff and Aggrieved Employees by way of suspension and/or termination

- 1 for use of protected and appropriate sick leave.
- 2 159. Section 246(i) of the *California Labor Code* states, “[a]n employer shall provide an employee
3 with written notice that sets forth the amount of sick leave available, or paid time off an
4 employer provides in lieu of sick leave, for use on either the employee’s itemized wage
5 statement described in Section 226 or in a separate writing provided on the designated pay date
6 with the employee’s payment of wages.”
- 7 160. AFC URGENT CARE and/or DOES fail to itemize sick leave available, or paid time off an
8 employer provides in lieu of sick leave, for use on Plaintiff’s and the Aggrieved Employees’
9 itemized wage statements or in a separate writing provided on the designated pay date with the
10 employee’s payment of wages.
- 11 161. AFC URGENT CARE’s and/or DOES’ sick pay policy fails to pay sick pay for all appropriate
12 and protected purposes enumerated in *California Labor Code* sections 233, 234, 246, and
13 246.5, and AFC URGENT CARE and/or DOES fail to itemize the amount of accrued/available
14 sick leave Plaintiff and Aggrieved Employees have on wage statements each pay period.
- 15 162. As a result of the unlawful acts of AFC URGENT CARE and/or DOES, Plaintiff and the
16 Aggrieved Employees she seeks to represent have been incurred damages, in amounts to be
17 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
18 thereon, attorneys’ fees and costs, pursuant to *California Labor Code* section 233(e).
- 19 163. These claims are on behalf of Plaintiff and all non-exempt employees employed by Defendant
20 and/or DOES in California.
- 21 164. Plaintiff, as a non-exempt employee who was subject to AFC URGENT CARE’s and/or
22 DOES’ unlawful sick pay/paid time off policy, is an Aggrieved Employee with standing to
23 bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a
24 representative of the general public to enforce California’s labor laws, and the penalty
25 provisions identified in *California Labor Code* section 2699.5
- 26 165. Plaintiff, as a representative of the people of the State of California, seeks all penalties
27 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
28 each of the following, as set forth in *California Labor Code* section 2699.5, which provides

that section 2699.3(a) applies to any alleged violation of the following provisions: for violations of the *California Labor Code* sections 233, 234, 246, and 246.5.

166. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an Aggrieved Employee, on behalf of herself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

167. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays for relief and judgment against Defendant AFC URGENT CARE and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time worked;
- C. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide compliant meal periods;
- D. For all statutory penalties for each pay period during which an employee was underpaid due to failure to provide compliant meal periods;
- E. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section 2699, et. seq. for failure to provide all rest periods;
- F. For all statutory penalties provided under *California Labor Code* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;

- 1 G. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
2 2699, et. seq. for failure to provide accurate, itemized wage statements;
- 3 H. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
4 2699, et. seq. for failure to timely pay wages at separation;
- 5 I. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
6 2699, et. seq. for failure to adopt a lawful sick pay policy; and
- 7 J. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section
8 2699(g)(1).

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff demands a jury trial as to liability.

11
12 **MARA LAW FIRM, PC**

13 Date: May 1, 2023

14 Signed: 

15 David Mara, Esq.

16 Jill Vecchi, Esq.

17 Taylor Getman, Esq.

18 Attorneys for Plaintiff GINA SANTOS, on
19 behalf of herself and all others similarly
20 situated, and on behalf of the general public
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