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similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

YVETTE CHERRI ALLISON-WRIGHT, an
individual and on behalf of all other
similarly situated,

Plaintiff,

v.

APERTO PROPERTY MANAGEMENT,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Lead Case No. Case No. 30-2023-01312346-
CU-OE-CXC [*Wright* Action]
Consolidated with Case No. 30-2023-01327244-
CU-OE-CXC [*Barahona* Action]

Assigned for All Purposes to:
Hon. Lon Hurwitz
Dept. CX-103

**DECLARATION OF SEPIDEH ARDESTANI
IN SUPPORT OF MOTION FOR APPROVAL
OF SETTLEMENT UNDER PRIVATE
ATTORNEY'S GENERAL ACT**

Date: February 28, 2025
Time: 1:30 p.m.
Dept.: CX-103

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1. I am an attorney duly licensed to practice in California and before this Court, and I am associated with Crosner Legal, PC, counsel of record for plaintiff Juan Carlos Barahona Murillo. I make this declaration in support of Plaintiffs' Motion for Approval of Settlement under the Private Attorneys General Act. If called to testify as to the within facts, I would and could competently do so.

2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties' Stipulation and Agreement for PAGA Representative Action Settlement (the "Settlement Agreement"). Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff Murillo's March 16, 2023 PAGA Notice letter and proof of submission to the Labor & Workforce Development Agency ("LWDA"). Attached hereto as Exhibit 3 is the LWDA's acknowledgment of receipt of the proposed settlement.

3. I am unaware of any other pending cases that would overlap with the claims alleged in this case or that would impact the claims of the class members in this case.

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4. Defendant Aperto is a property management company that provides leasing and management services for various properties throughout the United States. Defendant manages 169 properties in California alone. Plaintiff Wright worked for Defendant from December 2021 through November 2023 as a non-exempt Community Manager. Her duties included answering phones, dealing with vendors, ensuring rents are paid, weekly reports, and dealing with complaints. She was typically scheduled to work Monday through Friday, 8:00 a.m. to 5:00 p.m. However, Plaintiff Wright worked off the clock on regular basis. Plaintiff Murillo worked for Defendant from August 2021 through September 2022 as a non-exempt Maintenance Technician His duties included general upkeep of his assigned apartment building, such as painting, sweeping, cleaning common areas, and being responsive to emergency calls from tenants at all hours of the day. He typically worked Monday through Friday, 7:00 a.m. to 4:00 p.m., but was expected to remain on-call for some shifts, including weekends.

1 5. On March 14, 2023, Plaintiff Wright sent a PAGA notice to the LWDA, with a copy
2 to Defendant, alleging various wage-and-hour violations, and she also filed a class action complaint
3 alleging various wage-and-hour violations against Defendant on March 14, 2023. She subsequently
4 dismissed the class claims and filed a first amended complaint alleging claims under PAGA only. On
5 March 16, 2023, Plaintiff Murillo sent a PAGA notice to the LWDA, with a copy to Defendant,
6 likewise alleging various wage-and-hour violations. He then filed a PAGA-only representative
7 complaint on May 23, 2023.

8 6. Plaintiffs' respective complaints alleged a number of Labor Code violations by
9 Defendant. First, Plaintiffs alleged a failure to pay all wages owed, including failing to pay for "on
10 call" time, and failing to pay overtime based on the "regular rate" of pay. Plaintiffs also alleged
11 Aperto failed to provide all required meal and rest breaks on a fully compliant basis, failed to provide
12 accurate wage statement violations, failed reimburse for business expenses, and failed to pay all
13 wages owed at termination. Plaintiffs' complaints sought relief on behalf of all non-exempt current
14 and former employees employed by Defendant in California during the relevant time frame. Aperto
15 has at all times denied Plaintiffs' collective allegations and maintained it properly calculated and paid
16 all wages due, that its meal and rest break and payroll policies and procedures comply with California
17 law, that it provided allegedly Aggrieved Employees with required meal and rest breaks, and paid for
18 any "reasonable and necessary" business expenses.

19 7. After Plaintiffs filed their complaints, and upon discussing the merits of the case and
20 engaging in several meet and confer sessions regarding prospective law and motion and discovery
21 issues, the Parties agreed to an early global mediation. The Parties further agreed to a protocol for
22 exchanging additional documents and information before the mediation. Through this informal
23 discovery, Defendant provided Plaintiffs with information including, inter alia, the number of
24 potential Aggrieved Employees, the number of aggregate pay periods, sample pay stubs and time
25 records for about 25% of the allegedly Aggrieved Employees, employee handbooks and manuals,
26 and other policy documents regarding Defendant's time keeping and reporting policies. Plaintiffs
27 then reviewed and analyzed this information with the assistance of consulting experts from Berger
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1 Consulting Group to, inter alia, determine potential violation rates for meal and rest breaks, construct
2 a damages model, etc.

3 8. The Parties then mediated the case with Lynn Frank, Esq., a respected mediator with
4 extensive class action/wage and hour experience, in April 2024. Before and during the mediation,
5 Plaintiffs and counsel analyzed, researched, and investigated the potential issues, including matters
6 related to the calculation of damages, trial, and appellate issues and risks. During mediation, the
7 Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on a representative basis as
8 to the PAGA claims, the legal grounds for Plaintiffs' claims and Defendant's defenses, and the parties'
9 data analyses and conclusions based on data provided by Defendant. After a contentious full day of
10 negotiations, the Parties reached agreement on all major issues and subsequently formalized their
11 tentative settlement in the Settlement Agreement now before the Court for approval.

12 9. Finally, on April 18, 2024, Defendant filed notices of related cases in both the
13 Barahona and Wright Actions. On April 24, 2024, the Court entered an order pursuant to the Parties'
14 stipulation transferring the Barahona Action to this Department for purposes of consolidation and
15 settlement. On May 24, 2024, this Court ordered the actions consolidated for purposes of settlement,
16 with the Wright Action serving as the lead case.

17 **SUMMARY OF SETTLEMENT TERMS**

18 10. Under the settlement, Defendant will pay a non-reversionary settlement amount of
19 \$510,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the
20 LWDA and Aggrieved Employees, costs of settlement administration (\$7,750), enhancement awards
21 to Plaintiff Wright (\$5,000) and Plaintiff Murillo (\$100), and reasonable attorney's fees and costs
22 (\$170,000.00 and \$24,112.24, respectively). After all deductions from the GSA, Plaintiffs presently
23 estimate about \$303,037.76 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five
24 percent of the NSA (about \$227,278.32) will go to the LWDA, and the remaining 25% (about
25 \$75,759.44) will be distributed to the Aggrieved Employees in proportion to the total number of Pay
26 Periods each individual worked during the PAGA Period. I estimate the average award at about
27 \$140.82 per Aggrieved Employee, and that the awards will range from about \$4.46 for an Aggrieved
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1 Employee with one pay period, to about \$289 for an Aggrieved Employee who worked the maximum
2 number of pay periods (through the filing of this motion).

3 11. The Parties propose using CPT Group, Inc. as the Settlement Administrator. CPT has
4 extensive experience administering PAGA settlements, and has agreed to cap its fees at \$7,750.
5 Aperto will fund the settlement within 21 days of the Effective date and, within 20 days of receipt of
6 the GSA, CPT will mail a Notice and settlement check to all Aggrieved Employees via regular First-
7 Class U.S. Mail, using the most current, known mailing addresses identified in Aperto's records.
8 Aggrieved Employees need not submit claim forms and will automatically receive a Notice and
9 settlement check. Settlement checks will be negotiable for 180 days, after which time any unclaimed
10 residual funds will be forwarded to the Court Appointed Special Advocates ("CASA") of Orange
11 County. After inquiry to other members of my firm, I am unaware of any relationship between
12 Crosner Legal and the proposed *cy pres* beneficiary.

13 12. The California Supreme Court has explained that a judgment in "a representative
14 action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of
15 2004 ... is binding not only on the named employee plaintiff but also on government agencies and
16 any aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th
17 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil
18 penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is
19 intended to be "binding not only on the named employee plaintiff but also on government agencies
20 and any aggrieved employee not a party to the proceeding." The Settlement Agreement protects the
21 rights of the Aggrieved Employees to bring their own individual claims should they wish. For these
22 reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged, and the
23 Settlement Agreement specifically provides the Release is inapplicable to any claims other than those
24 brought under PAGA.

25 **NATURE OF THE ALLEGED VIOLATIONS**

26 13. First, Plaintiffs alleged Defendant failed to pay certain "all call" time worked by
27 employees. Here, Plaintiffs allege Defendant maintained policies that restricted employee activities
28 while "on call" such that the employees effectively remained subject to employer control. For

1 instance, when Plaintiff Murillo was on-call outside of his regular work hours he was required to
2 **promptly** respond to emergency calls within a 30-minute timeframe and accordingly he had to be
3 within a 30-minute radius of the apartment complex at all times. Plaintiffs' argued such restrictions
4 subjected them to sufficient employer control to render the time compensable.

5 14. Next, Plaintiffs alleged Aperto failed to include certain forms of compensation, such
6 as performance-based bonuses, when determining employees' "regular rate" of pay for purposes of
7 then calculating the correct overtime rate. As a result, per Plaintiffs, Aperto underpaid Aggrieved
8 Employees for many of their overtime hours.

9 15. Plaintiffs also contend they did not receive legally compliant meal periods, and alleged
10 numerous "de facto" violations where Aggrieved Employees were consistently unable to take timely,
11 off duty, thirty-minute, uninterrupted meal periods. Plaintiffs also alleged meal periods were cut
12 short, interrupted, or worked through completely, and that they had to monitor their cell phones at all
13 times to respond to work-related communications. Plaintiffs further allege the Aggrieved Employees
14 did not receive compliant rest periods for the same reasons in that Aperto required employees to
15 monitor their phones at all times and, as a result, employees were not entirely free from employer
16 control while on a rest period.

17 16. Finally, Plaintiffs alleged Aperto failed to reimburse necessary business expenses for
18 use of personal cell phones, as supervisors would contact Plaintiffs and other employees on their
19 personal phones both at and away from work regarding a host of issues. Unless the position required
20 it as such (as such Plaintiff Murillo's position for which he was reimbursed at least \$25 per month
21 for business use of his personal cell phone), Plaintiffs and the Aggrieved Employees received no
22 reimbursement for using their own phones on company business. Lastly, Plaintiffs also bring claims
23 derivative of the foregoing claims, including a derivative wage statement claim based on the failure
24 to pay all wages due, and failure to pay all wages due and owing upon separation of employment
25 under Labor Code §§ 201-203.

26 **NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES**

27 17. For mediation, Aperto indicated it employed approximately 538 non-exempt
28 employees in California during the applicable PAGA period, and these individuals worked

1 approximately 17,000 pay periods during that time. Based on the data and information provided,
2 Plaintiffs estimated Defendant's maximum PAGA exposure at approximately \$7,425,600.

3 18. We calculated these amounts as follows:

4 Unpaid Wages/On Call/Off the Clock

5 17,000 pay periods * 100% violation rate * \$100/violation = \$1,700,000

6 Unpaid Wages/Regular Rate

7 17,000 pay periods * 4.3% violation rate * \$100/violation = \$73,100

8 Meal Break Violations

9 17,000 pay periods * 31.2% violation rate * \$100/violation = \$530,400

10 Rest Period Violations

11 17,000 pay periods * 100% violation rate * \$100/violation = \$1,700,000

12 Wage Statement Violations

13 17,000 pay periods * 100% violation rate * \$100/violation = \$1,700,000

14 Business Expenses Violations

15 17,000 pay periods * 100% violation rate * \$100/violation = \$1,700,000

16 Failure to Pay Final Wages

17 221 former employees * 1 violation per employee * \$100/violation = \$22,100

18 **THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING THE STRENGTH**
19 **OF PLAINTIFFS' CASE, THE DISCOVERY PERFORMED, AND AMOUNT OFFERED**
20 **IN SETTLEMENT**

21 19. In response to Plaintiffs' unpaid wage claims, Aperto took the position that any alleged
22 "on call" time wasn't compensable because employees were not subject to any form of employer
23 control at such times, much less any degree of control sufficient to render the time compensable. Per
24 Aperto, Aggrieved Employees could engage any personal activities they wished while on call such
25 that any employer control was truly minimal, if any even existed. On the regular rate issue, its payroll
26 and compensation policies paid employees for all hours worked at the correct hourly rates, and if any
27 overtime was paid at the incorrect rate, it was intermittent and against company policy and would not
28 serve as the basis for any appreciable civil penalties.

1 20. For the meal and rest break claims, Aperto offered multiple defenses. First, it
2 emphasized its written meal and rest break policy generally was compliant, that it authorized and
3 permitted all necessary breaks, and that employees received full uninterrupted lunch periods free from
4 employer control. It further noted its time records generally showed employees took compliant meal
5 periods, and that it compensated employees with the required extra hour of pay for any documented
6 violations. Defendant also asserted that even to the extent any late or short meal periods occurred, it
7 was in violation of company policy and aberrational, and would require significant individual
8 inquiries to determine the reasons underlying any such alleged violations and whether it was by
9 employee choice or some other reason.

10 21. As with meal breaks, Defendant argued the applicable rest break policies complied
11 with California law, and that it authorized and permitted employees to take all required breaks.
12 Defendant further contended that, in light of the fact that it is not required to maintain a record of
13 rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking
14 rest periods would be purely anecdotal and individual issues would predominate on liability. This
15 arguably would once again make a trial unmanageable since the number of instances an employee
16 missed a rest break would have to be tested on a case by case basis to determine compliance.

17 22. For the expense reimbursement claim, Aperto countered there typically would be no
18 need for employees to communicate via phone or text while performing their job duties, or for them
19 to otherwise use their personal phones for any reason. Defendant also claimed that for the few
20 positions where a personal cell phone was occasionally required, such employees (including
21 Plaintiff Murillo) were reimbursed on a monthly basis in an amount of at least \$25 per month. Per
22 Defendant, to the extent Plaintiffs or other Aggrieved Employees used their individual phones for
23 work purposes, it was done purely for personal convenience and was neither required nor necessary
24 in order to perform their job duties. Thus, per Defendant, no reimbursement was required.

25 23. Plaintiffs also alleged derivative violations of Labor Code § 226 (wage statement
26 violations) and §§ 201-203 (waiting time penalties). The derivative wage statement claims (based
27 on the unpaid wage and meal/rest claims). The waiting time penalties claim, also is entirely
28 derivative and will rise or fall along with the primary claims, in addition to being subject to “good

1 faith” and other defenses available to Defendant. Accordingly, Plaintiffs had to discount the value
2 of this claim significantly in light of these multiple potential defenses. Defendant also contended a
3 substantial discount should be applied to the civil penalties for these derivative (i.e., “stacked”)
4 violations, as it would be unfair to penalize Defendant multiple times for the same violation.

5 24. Defendant also emphasized PAGA gives the Court wide latitude to reduce the
6 amount of civil penalties “based on the facts and circumstances of a particular case” if “to do
7 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” I am
8 aware of several state and federal courts in California have applied significant reductions to PAGA
9 civil penalties even after plaintiff prevailed on the merits, and believe some kind of reduction by the
10 Court was likely. Finally, Aperto argued most of the Aggrieved Employees, including both
11 Plaintiffs, signed valid and enforceable arbitration agreements. Thus, if Plaintiffs could be
12 compelled to individual arbitration it would further delay and potentially derail resolution of the
13 PAGA representative claims.

14 25. Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs
15 claims, anyone of which, if successful, could have decimated Plaintiffs’ case. And Defendant
16 vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward
17 with this litigation, and it could have taken years to realize any recovery in this action along with
18 the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
19 unmanageable, Defendant also intended to raise additional defenses on damages, including the
20 proper measure of civil penalties and the appropriate discount to place on any assessment of such
21 penalties. Accounting for the these litigation risks, we applied the following discounts to the
22 theoretical maximum penalties: Unpaid Wages/On Call – 90%, or \$170,000; Unpaid
23 Wages/Regular Rate 50% or \$36,550; Meal Break Violations 50% or \$265,200; Rest Period
24 Violations 90% or \$170,000; Wage Statement Violations 80% or \$340,000; Business Expenses
25 Violations 17,000 pay periods 10% or \$170,000; Failure to Pay Final Wages 50% or \$11,050. We
26 then assumed the Court would apply at least a 50% reduction to those penalties, leaving an
27 estimated recovery after trial of about \$581,400. The GSA therefore represents around 87% of the
28 estimated recovery after trial.

26. Although Plaintiffs and their counsel believe they could have prevailed, there was no such guarantee. When the risks of overcoming Defendant's demurrer, a motion to compel arbitration, a manageability defense, prevailing at trial on the merits on all claims, and securing 100% of the theoretical civil penalties for every single pay period at issue all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiffs would have to shoot the moon and win both liability and maximum penalties on all claims for every single pay period at issue, which outcome, for the reasons discussed, is unlikely. Given Defendant's various procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is eminently reasonable.

SUBMISSION TO THE LWDA

27. My office timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing, as reflected in Exhibit 3 hereto and the proof of service.

THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

28. Under the terms of the Settlement Agreement, Plaintiffs' counsel respectfully request an award of attorney's fees equal to 1/3 Gross Settlement Amount, or \$170,000. A one-third common fund attorney fee award is consistent with what courts have awarded Plaintiffs' counsel in other representative actions. Awarding attorney's fees of one-third of a gross settlement amount is favored by California courts when a fund established for the common benefit of others is involved, such as here.

29. There are several additional factors why I believe that the Court should award one-third of the common fund as a reasonable attorney's fee. First, counsels' efforts resulted in a common fund settlement amount of \$510,000.00, which for the reasons explained, is fair and reasonable in light of the risks/defenses Defendant raised in litigation and threatened to raise at trial and in post-trial appeals. Further, this is a significant sum that furthers the purposes underlying PAGA such as augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring future non-compliance. Moreover, this result was achieved by the

1 work and success of this office and our co-counsel, who negotiated the settlement after extensive
2 preparation, informal discovery, and an adversarial mediation.

3 30. Second, Plaintiffs faced significant risks going forward with the litigation. As
4 discussed above, Defendant raised various defenses to their claims, anyone of which, if successful,
5 could have decimated Plaintiffs' case. Plaintiffs faced risky legal issues going forward with this
6 litigation, and it would have taken several more years to realize any recovery in this action along
7 with the possibility of post-trial appeals,

8 31. Third, Crosner Legal are experienced class and representative action litigators, and
9 have achieved several approved PAGA settlements. This experience and expertise, combined with
10 the high quality of work performed, resulted in the settlement achieved in this case.

11 32. I obtained a Bachelors in Science Degree in Anthropology from the University of
12 California, Los Angeles. Prior to law school, I moved to Paris, France and worked as a translator
13 for a prestigious translation company where I translated business and legal documents from
14 French to English. After returning to the United States and I Whittier Law School and earned a
15 Juris Doctor in 2009 followed by an L.L.M. in 2010 from the Santa Clara University School of
16 Law. I have some fifteen years of experience as a practicing attorney, most of which have focused
17 on litigation of employment, labor law, consumer, and class action claims. Prior to joining
18 Crosner Legal in 2021, I worked as an associate attorney at Gaines & Gaines, APLC for ten years
19 where I gained extensive experience in wage and hour litigation and assisted in obtaining millions
20 of dollars for employees. Currently, over ninety percent (95%) of my practice is dedicated
21 exclusively to the prosecution of wage and hour class actions.

22 33. Zach Crosner is a 2010 graduate of University San Diego School of Law, and has
23 some 13 years of experience as a practicing attorney, all of which have focused on litigation of
24 employment, labor law, consumer, and class action claims. Following graduation, he immediately
25 began working for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where
26 he had the fortune of working directly with past presidents of the consumer attorneys and
27 recipients of trial attorneys of the year awards. He also worked for former CAALA and CLAY
28 trial attorney of the year recipient, attorney Conal Doyle, as his sole associate attorney. During his

1 tenure at these firms, he focused on advocating for the rights of consumers and employees in class
2 action litigation, civil rights and employment litigation, catastrophic injuries, insurance bad faith
3 and appellate litigation.

4 34. In 2013, Mr. Crosner founded the law firm of Crosner Legal, P.C. which since its
5 inception has focused almost exclusively on wage and hour class actions and other labor and
6 employment law cases representing plaintiffs. Currently, over ninety percent (90%) of his
7 practice is dedicated exclusively to the prosecution of wage and hour class actions, and Crosner
8 Legal is currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty
9 (50) wage and hour class actions and/or PAGA representative actions in both federal and state
10 courts throughout California.

11 35. Mr. Crosner currently is an executive board member of the Wage and Hour
12 Committee and the Legislative Committee for the California Employment Lawyers Association; a
13 member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
14 Wage and Hour Committee member and Class Action Committee member for the National Trial
15 Lawyers; a member of the American Association for Justice; and member of the Pound Civil
16 Justice Institute. He was selected for 2018-20 by Super Lawyers as a “Southern California Rising
17 Star” for employment and labor law.

18 36. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage and Hour
19 practice group. She graduated from the University of California, San Diego in 2004, graduated from
20 California Western School of Law in 2013, and has been a member of the California Bar since 2013.
21 She gained extensive experience in wage and hour litigation, beginning work as a class action attorney
22 in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley Law Firm,
23 APLC). She has handled wage and hour class actions and PAGA lawsuits for nearly ten years and
24 has assisted in obtaining millions of dollars for employees during her years of practice.

25 37. Kiara Bramasco received her undergraduate degree, magna cum laude, from
26 Loyola Marymount University in Political Science, and then received her JD from Loyola Law
27 School in 2018. She then spent several years with well-known plaintiff’s firm Moss Bollinger,
28 first as a law clerk and then as an associate, where her practice focused on employment law,

1 particularly wage and hour class action and PAGA litigation. She joined Crosner Legal in 2021.

2 38. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her
3 law degree from George Washington University in 2007. She has been affiliated with my firm since
4 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost exclusively
5 on wage and hour class and representative actions. She has spent her entire career representing
6 plaintiffs in employment litigation, including several years as an associate at well-known plaintiff's
7 firm Carlin & Buchsbaum.

8 39. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
9 action settlements while serving as lead class counsel in recent years, including but not limited to a
10 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
11 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement in
12 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty.
13 Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean Cities*
14 *Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and hour
15 class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American Ambulance*,
16 Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action settlement in
17 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a \$1.5 million
18 wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case
19 No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and hour class action settlement
20 in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25
21 million wage and hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol,*
22 *Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action
23 settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles
24 Cty. Super. Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original*
25 *Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1
26 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
27 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement in
28 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty.

1 Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v. Valley*
2 *Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and
3 hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San
4 Bernardino Cty. Super. Ct.); \$1.015 million wage and hour class action settlement in 2023 in
5 *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a
6 \$1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation*
7 *Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour
8 class action settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty.
9 Super. Court); a \$1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*,
10 Case No. 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class
11 settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct);
12 and a \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature*
13 *Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

14 40. Based upon the qualifications and experience set forth above, I believe the following
15 hourly rates are reasonable: Zach Crosner \$800/hr, Jamie Serb \$750/hr, Sepideh Ardestani
16 \$700/hour, Brenden Hamilton \$600/hr; Kiara Bramasco, \$650/hr.

17 41. I request the Court apply the above hourly billing rates in this case, as it reasonable
18 in the California legal market for attorneys handling wage and hour class and PAGA actions. I
19 have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour
20 class action firms in major California legal markets for partner-level attorneys with experience
21 comparable to mine. These rates have ranged from \$650 to \$900 per hour for calendar years 2018-
22 2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los Angeles,
23 with 28 years of experience, \$900/hour (2023), Matthew Matern of Matern Law Group in Los
24 Angeles, with approximately 26 years of experience \$850/hour (2018); Craig Ackermann of
25 Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience \$850/hour
26 (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and
27 45 years of experience respectively, both \$825/hour (2018), Zachary Crosner of Crosner Legal PC
28 in Los Angeles, 13 years of experience \$750/hour (2022), and James Kawahito of Kawahito Law

1 Group in Los Angeles, with approximately 16 years of experience \$750/hour (2020).

2 42. The requested rates also comport with the adjusted Laffey Matrix, which provides
3 that reasonable hourly rates for attorneys with 10+ years of experience, such as myself, Mr.
4 Crosner, and Ms. Serb, are over \$800/hour. The adjusted Laffey Matrix may be found at
5 <http://www.laffeymatrix.com/sec.html>.

6 43. Fourth, Crosner Legal has been representing Plaintiff Murillo (and the State of
7 California) in this matter on a strictly contingent basis and as such, had to forego other financial
8 opportunities to litigate other cases, incurred the risk of non-recovery after a substantial investment
9 of time, money, and resources, and have done so since the inception of this case without any
10 payment or compensation. This is not an easy burden for a small firm. If, despite these hardships
11 and risks, the best this office could hope for is merely to be paid our customary hourly rate
12 multiplied by the number of hours worked on the case, then we would not be compensated for the
13 hardships and serious risks it faced litigating this contingency case, and would not be incentivized
14 to take on similar private attorney general cases in the future.

15 44. Fifth, the request for attorney's fees in the amount of one-third of the common fund
16 falls well within the norms accepted by state and federal courts in California in comparable wage
17 and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery
18 under the common fund doctrine was recently approved by the California Supreme Court in Laffitte
19 v. Robert Half Int'l, Inc. (2016) 1 Ca1.5th 480. For all of the above reasons, a common fund fee
20 award here in the amount of one-third of the \$510,000 common fund, or \$170,000, is fair and
21 reasonable.

22 45. Crosner Legal expended a total of 95.1 attorney hours on this matter, and
23 accordingly the firm's lodestar totals approximately \$69,650, excluding time to be incurred at the
24 hearing on this motion and thereafter to implement and administer the settlement. Crosner Legal's
25 lodestar is summarized in Exhibit 4 hereto. As set forth in the Bibiyan declaration, our co-counsel's
26 lodestar is \$146,248.00, for a total combined lodestar of \$215,898.00. Accordingly, on a lodestar
27 basis, the requested fees represent exceed the base lodestar and therefore there is no request for a
28 lodestar enhancement.

1 46. As noted, Plaintiffs' counsel has represented Plaintiffs for some eighteen months
2 with respect to this matter and has expended a significant amount of time and resources in that
3 representation. We agreed to litigate this case on a purely contingent basis and in so doing assumed
4 considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with
5 these matters in general. Under all relevant factors (as outlined herein and in the accompanying
6 memorandum), we respectfully request the Court award the requested fees of \$170,000 based on the
7 common fund theory with a corresponding lodestar cross-check and no lodestar enhancement.
8 Crosner Legal and Bibiyan Law Group will split any fees awarded 50/50.

9 47. We also request reimbursement of Crosner Legal's actual out-of-pocket expenses
10 incurred to prosecute this action. These expenses were incidental and necessary to the effective
11 representation of the employees.

12 48. Crosner Legal's costs are \$14,800.02, including court filing/service of process fees,
13 mediation fees, expert fees, and postage. Notably, the requested costs do not include any and all
14 printing and research charges. A true and correct itemization of the costs and expenses incurred is
15 set forth below:

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	\$1,925.50
Mediation Fees	\$10,000.00
Expert Fees	\$2,700.00
PAGA Filing Fee	\$75.00
Postage	\$99.52
Total Costs and Expenses	\$14,800.52

1 As stated in the Bibiyan Declaration, our co-counsel's costs total \$9,311.72, and both firm's total
2 costs are \$24,112.24. The requested costs are reasonable and uncontested and should be approved
3 in full.

4 49. Here, pursuant to the Settlement Agreement, Plaintiffs seek incentive awards of
5 \$5,000 for Ms. Wright and \$100 for Mr. Murillo. These requests are reasonable given the much
6 broader release that Plaintiffs are agreeing to, as well as their respective efforts in this case and the
7 risks they undertook on behalf of the Aggrieved Employees. Additionally, by contacting and
8 retaining counsel to pursue these claims, Plaintiffs made this settlement possible for the other
9 Aggrieved Employees and the LWDA, while shouldering the risk of being liable for Defendant's
10 litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public
11 lawsuit (discoverable even through a simple google search) for the benefit of other employees,
12 placing them at risk of discrimination by future prospective employers. Among taking many other
13 actions assisting in the successful litigation of this case, both Plaintiffs provided substantial factual
14 information to their counsel, attended numerous meetings with my office to discuss the case, and
15 generally participated in all phases of the litigation. Accordingly, the requested enhancement
16 payments to Plaintiffs are appropriate and justified as part of the Settlement.

17 50. For the foregoing reasons, it is respectfully requested that the Court approve the
18 settlement in its entirety.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct. Executed on November 14, 2024, at Los Angeles, California.

21
22 

23 Declarant
24
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27
28

EXHIBIT

1

1 RUTAN & TUCKER, LLP
 Edson K. McClellan (State Bar No. 199541)
 2 emcclellan@rutan.com
 Kenneth J. Zielinski (State Bar No. 258555)
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7 Attorneys for Defendant
 APERTO PROPERTY MANAGEMENT, INC.

8 **BIBIYAN LAW GROUP, P.C.**

9 David D. Bibiyan (Cal. Bar No. 287811)
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 13 Los Angeles, California 90024
 Tel: (310) 438-5555; Fax: (310) 300-1705
 14

15 Attorneys for Plaintiff, Yvette Allison Wright and all others
 similarly situated

16 [ADDITIONAL COUNSEL ON FOLLOWING PAGE]

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 FOR THE COUNTY OF ORANGE

19 YVETTE CHERRI ALLISON-WRIGHT, an
 20 individual and on behalf of all others similarly
 situated,

21 Plaintiff,

22 v.

23 APERTO PROPERTY MANAGEMENT,
 24 INC., a California corporation; and DOES 1
 through 100, inclusive,

25 Defendants.

Lead Case No. Case No. 30-2023-01312346-
 CU-OE-CXC [*Wright* Action]
 Consolidated with Case No. 30-2023-01327244-
 CU-OE-CXC [*Barahona* Action]

ASSIGNED FOR ALL PURPOSES TO:
 HON. LON HURWITZ; DEPT.: CX103

**STIPULATION AND AGREEMENT FOR
 PAGA REPRESENTATIVE ACTION
 SETTLEMENT**

Date Action Filed: March 14, 2023
 Trial Date: TBD

1 JAMIE SERB, ESQ. (SBN 289601)
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2 SEPIDEH ARDESTANI (SBN 274259)
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4 CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
5 Beverly Hills, CA 90210
Tel: (866) 276-7637
6
7 Attorneys for Plaintiff Juan Carlos Barahona Murillo
and all others similarly situated
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1 This Stipulation and Agreement for PAGA Representative Action Settlement is made and
2 entered into by and between Plaintiffs Yvette Cherri Allison-Wright and Juan Carlos Barahona
3 Murillo, on behalf of themselves and as representatives of the State of California and the Aggrieved
4 Employees (collectively, “Plaintiffs”), on the one hand, and Defendant Aperto Property
5 Management, Inc. (“Defendant”) (collectively, the “Parties”), and is made in compromise of
6 disputed claims. The Parties agree that the above-entitled representative actions shall be settled on
7 the terms and conditions set forth in this Stipulation, subject to the approval of the Court pursuant
8 to Section 2699(1) of the California Labor Code Private Attorneys General Act of 2004, Labor Code
9 §§ 2698, *et seq.* (“PAGA”).

10 DEFINITIONS

11 1. “**Actions**” means and refers to (1) *Yvette Cherri Allison-Wright, et al., v. Aperto*
12 *Property Management, Inc.*, Orange County Superior Court, Case No. 30-2023-01312346-CU-OE-
13 CXC (the “Wright Action”); and (2) *Juan Carlos Barahona Murillo, et al., v. Aperto Property*
14 *Management, Inc.*, Orange County Superior Court, Case No. 30-2023-01327244-CU-OE-CXC (the
15 “Barahona Action”). The Actions have been consolidated for all purposes, with the Wright Action
16 serving as the lead case.

17 2. “**Aggrieved Employees**” means and consists of anyone who was employed by
18 Defendant in the State of California as a non-exempt or hourly-paid employee at any time during
19 the PAGA Period.

20 3. The terms “**Agreement**,” “**Settlement**,” and “**Settlement Agreement**” mean this
21 Stipulation and Agreement for PAGA Representative Action Settlement, which the Parties
22 acknowledge sets forth all material terms and conditions of the Settlement between them, and which
23 is subject to Court approval pursuant to Section 2699(1) of the California Labor Code Private
24 Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

25 4. “**Court**” means the Orange County Superior Court.

26 5. “**Defendant**” means Aperto Property Management, Inc.

27 6. “**Effective Date**” of this Agreement shall be the later of: (i) the 61st day after service
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1 of notice of entry of the Final Order and Judgment, if no appeal, review, or writ has been filed; or
2 (ii) if an appeal, review, or writ is sought from the Final Order and Judgment, the day after the Final
3 Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final
4 Order and Judgment are no longer subject to further judicial review. The Effective Date is
5 conditioned upon all of the following occurring: (a) this Agreement has been signed by the Parties,
6 PAGA Counsel, and Defendant's counsel; and (b) the Court has entered the Final Order and
7 Judgment.

8 7. **"Enhancement Award"** means the amount the Court authorizes to be paid to each
9 of the Representative Plaintiffs in addition to their respective Individual PAGA Payments, in
10 recognition of their efforts and work in prosecution of the Actions, in an amount not to exceed
11 \$5,000.00 (Five Thousand Dollars and Zero Cents) for Plaintiff Yvette Cherri Allison-Wright, and
12 \$100.00 (One Hundred Dollars and Zero Cents) for Plaintiff Juan Carlos Barahona Murillo.

13 8. **"Final Order and Judgment"** means the proposed order granting final approval of
14 the Settlement and entering Judgment, in the form substantially similar to that attached to this
15 Agreement as Exhibit B.

16 9. **"Gross Settlement Amount"** means a maximum total of \$510,000.00 (Five Hundred
17 and Ten Thousand Dollars and Zero Cents), which includes all payments owing as a result of this
18 Agreement, including the Net Settlement Amount; Settlement Administration Costs; Representative
19 Plaintiffs' Enhancement Awards; and PAGA Counsel Attorneys' Fees and Costs as awarded by the
20 Court.

21 10. **"LWDA Payment"** means a payment to the California Labor Workforce and
22 Development Agency in an amount equal to 75% of the Net Settlement Amount.

23 11. **"Net Settlement Amount"** is the Gross Settlement Amount less (1) PAGA
24 Counsel's Attorneys' Fees and Costs; (2) Representative Plaintiffs' Enhancement Awards; and (3)
25 Settlement Administration Costs.

26 12. **"PAGA Aggrieved Employee Payment"** means a payment of 25% of the Net
27 Settlement Amount, which the Parties have agreed to pay the Aggrieved Employees in connection
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1 with the settlement of the PAGA Claim.

2 13. “**PAGA Claim**” means the claim for civil penalties under PAGA alleged in the
3 Actions and stated in Representative Plaintiffs’ March 14 and 16, 2023 notice letters to the LWDA,
4 true and correct copies of which are attached as Exhibit C.

5 14. “**PAGA Counsel**” means Jamie Serb, Sepideh Ardestani, and Zachary Crosner of
6 Crosner Legal, PC and Bibiyan Law Group, P.C.

7 15. “**PAGA Period**” means March 19, 2022, through the date the Court grants approval
8 of the Settlement.

9 16. “**Released Claims**” means all claims or causes of action for PAGA penalties that
10 were, or could have been asserted in Representative Plaintiffs’ March 14 and 16, 2023 notice letters
11 to the LWDA and that arise from the facts, matters, transactions or occurrences alleged in the
12 operative complaints in the Actions, pursuant to the California Labor Code Private Attorneys
13 General Act of 2004, Labor Code §§ 2698, *et seq.*, based on the alleged violations of Labor Code
14 §§ 96, 98.6, 201-204, 210, 212, 213, 216, 218, 218.5, 221-224, 225.5, 226, 226.3, 226.6, 226.7,
15 227.3, 232, 232.5, 233, 234, 245-248.6, 256, 404, 432, 432.3, 432.5-432.8, 510, 512, 515, 558,
16 558.1, 970, 1024.5, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
17 1198.5, 1199, 1527, 2802, 2810.5, 3366, 3457, 6401-6403, 6409.6, 6432, Cal. Code Regs, title 8,
18 §§ 11040 and 3395, Government Code section 12952, Business and Professions Code §§ 16600,
19 16700 and 17200, and all applicable IWC California Wage Orders, whether for civil penalties or
20 attorneys’ fees and costs arising out of the PAGA claims at issue, including claims for: failure to
21 pay minimum wages for all hours worked; failure to calculate and pay all overtime wages earned;
22 failure to pay employees for all hours worked (including for any time spent performing off-the-clock
23 work or waiting for security screenings or temperature checks); failure to properly pay the regular
24 rate; unlawful rounding and deduction policies and practices; failure to pay split shift premiums;
25 failure to pay reporting time pay; failure to provide lawful meal periods and pay meal period
26 premiums; failure to provide lawful rest breaks and pay rest break premiums; failure to permit
27 cooldown rest periods; failure to maintain accurate timekeeping and pay records; failure to provide
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1 paid sick leave or COVID-19 supplemental sick pay and/or at the regular rate; failure to provide
2 notice of paid sick leave or COVID supplemental paid sick leave; failure to provide notice of all
3 employment-related information, including all material terms of employment; failure to furnish
4 employees with documents signed to obtain or hold employment; failure to provide accurate
5 itemized wage statements; unlawful deductions; failure to reimburse employees for necessary
6 business expenses and deposits (including, but not limited to, expenses related to personal vehicles,
7 mileage, gas, uniforms and laundry costs, tools and safety equipment, and personal phones and
8 phone plans); failure to provide suitable seating and resting facilities; failure to furnish safety
9 devices and safeguards; failure to provide safe, clean, and sanitary facilities; failure to provide
10 proper notice of COVID-19 exposure; preventing employees from disclosing violations of state and
11 federal law and preventing employees from engaging in lawful conduct during non-work hours;
12 unlawful agreements and inquires into criminal history; unlawful background checks; preventing
13 employees from using or disclosing the skills, knowledge, and experience they obtained at
14 Defendant for purposes of competing with Defendant; unlawful non-compete agreements; requiring
15 employees to waive rights under the FEHA or Labor Code; failure to furnish payroll records and
16 personnel records upon request; improper and willful misclassification; unlawful credit lodging;
17 failure to pay all wages in full and on time during employment; failure to pay vacation and paid time
18 off time; failure to pay all wages due upon termination; and the making of false representations
19 regarding obtaining/continued employment.

20 17. **“Released Parties”** means Defendant and its subsidiaries, affiliates, parent
21 companies, shareholders, members, owners, officers, employees, attorneys, representatives, agents,
22 insurers, predecessors, successors, and assigns, and any individual or entity which could be jointly
23 liable with Defendant.

24 18. **“Representative Plaintiffs”** means Plaintiffs Yvette Cherri Allison-Wright and Juan
25 Carlos Barahona Murillo.

26 19. **“Settlement Administrator”** shall mean CPT Group, Inc., a neutral third-party
27 administrator chosen by the Parties, subject to approval by the Court.
28

RECITALS

20. On March 14, 2023, Plaintiff Wright sent a PAGA notice to the LWDA, with a copy to Defendant, alleging various wage-and-hour violations against Defendant. Plaintiff Wright filed a class action complaint alleging various wage-and-hour violations against Defendant on March 14, 2023. Although the class action claims were subsequently dismissed, on January 11, 2024, Plaintiff Wright filed a first amended complaint that solely alleged a representative PAGA claim against Defendant.

21. On March 16, 2023, Plaintiff Barahona sent a PAGA notice to the LWDA, with a copy to Defendant, alleging various wage-and-hour violations against Defendant. The PAGA representative claim in the Barahona Action was filed on May 23, 2023.

22. The Parties have conducted a thorough investigation into the facts of the Actions. This included exchanging data and information (including a sampling of time and corresponding pay records, as well as the production of Defendant's policies in effect during the PAGA Period) as well as documents relating to the underlying alleged violations.

23. On April 11, 2024, the Parties attended a mediation before Lynn Frank, Esq. of Frank & Feder Mediations, where the Parties reached an agreement in principle to resolve the Actions.

24. On April 18, 2024, Defendant filed notices of related cases in both the Barahona and Wright Actions.

25. On April 24, 2024, the Court entered an order, pursuant to the Parties stipulation, transferring the Barahona Action from Department CX105 to Department CX103 of the Orange County Superior Court, where the Wright Action was currently pending, for purposes of consolidation and settlement.

26. On May 24, 2024, the *Barahona* and *Wright* actions were consolidated for purposes of settlement, with the *Wright* Action serving as the lead case.

27. The Parties believe that the Settlement is fair, reasonable, and adequate. The Parties understand, acknowledge, and agree that this Settlement Agreement constitutes a compromise of Representative Plaintiffs' and the Aggrieved Employees' PAGA Claim, and that it is the desire and

1 intention of the Parties to effect a final and complete resolution of the PAGA Claim that the
2 Representative Plaintiffs and the Aggrieved Employees have against Defendant and the Released
3 Parties.

4 28. The Parties enter into this Settlement Agreement on a conditional basis. In the event
5 the Court does not enter a Final Order and Judgment as defined in this Settlement Agreement, this
6 Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect
7 whatsoever, and will not be referred to or utilized for any purpose whatsoever.

8 29. Defendant denies that it engaged in any misconduct in connection with the wage-
9 and-hour practices associated with the Aggrieved Employees. Defendant further denies that it has
10 any liability of any kind associated with the claims alleged in the Actions. Defendant contends that
11 it has complied with both federal and state wage-and-hour laws, and all other laws regulating its
12 relationship with the Aggrieved Employees, including with the Representative Plaintiffs.

13 30. Defendant denies all of the claims in the Actions, and does not waive, but rather
14 expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural
15 and factual grounds should this Settlement Agreement not become final. This Settlement
16 Agreement reflects a compromise reached to end litigation.

17 31. The Parties stipulate and agree to the following terms of this Settlement Agreement
18 with the intent that this Agreement finally disposes of the Actions with prejudice as set forth in this
19 Agreement.

20 TERMS AND CONDITIONS

21 32. **Settlement Payments and Calculation of Claims.** Subject to final Court approval
22 and the conditions specified in this Agreement, and in consideration of the mutual covenants and
23 promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of
24 **\$510,000.00** (Five Hundred and Ten Thousand Dollars and Zero Cents). For the avoidance of doubt,
25 Defendant shall not be required to pay any amount over \$510,000.00 for this Settlement, except as
26 provided in Paragraph 33. The Gross Settlement Amount includes, but is not limited to, payments
27 to be made to PAGA Counsel's attorneys' fees and costs, the LWDA Payment, Plaintiffs'
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Enhancement Awards, and Settlement Administration Costs. The following table summarizes the allocation of the Gross Settlement Amount:

Gross Settlement Amount of \$510,000.00 Is Broken Down As Follows:

- PAGA Counsel Attorneys' Fees not to exceed 1/3 (or \$170,000.00).
- PAGA Counsel Costs not to exceed \$30,000.00.
- Plaintiffs' Enhancement Awards not to exceed \$5,100.00 (combined).
- Settlement Administration Costs, not to exceed \$7,750.00.
- Approximately \$297,150.00 for the Net Settlement Amount:
 - 25% of the Net Settlement Amount for the PAGA Aggrieved Employee Payment (approximately \$74,287.50).
 - 75% of the Net Settlement Amount for the LWDA Payment (approximately \$222,862.50).

33. **Settlement Escalator.** The Settlement is based on the assumption that there were 17,000 pay periods worked by the Aggrieved Employees for the period from March 19, 2022 through February 9, 2024. If the total number of pay periods during the PAGA Period increases to a figure that is greater than 18,700 (10% of the 17,000 estimated pay periods), Defendant will have the choice of: (a) paying a proportional increase in the Settlement Amount for each additional pay period over 18,700 or (b) modifying the end date of the PAGA Period to a date that avoids incurring any pro-rata increase.

34. **Apportionment of Gross Settlement Amount.** The Parties agree, subject to Court approval and the conditions specified in this Agreement, that the Gross Settlement Amount shall be apportioned as follows:

a. **Settlement Administration Fees and Costs:** The fees and costs associated with settlement administration (e.g., preparing and mailing payments to the Aggrieved Employees, tax documentation, etc.) (the "**Settlement Administration Costs**") will be paid from the Gross Settlement Amount and are estimated to be up to \$7,750.00. The Parties agree to use CPT Group, Inc. as the Settlement Administrator. To the extent Settlement Administration Costs are not approved by the Court in the amounts set forth above, and the order becomes final, then the non-approved amount will be added to the Net Settlement Amount to be distributed based on the formula set forth in Paragraph 34.d.

b. PAGA Counsel's Attorneys' Fees and Costs: The Parties agree that, subject to the Court's review and approval, PAGA Counsel will be paid from the Gross Settlement Amount an amount that is up to 1/3 of the Gross Settlement Amount for attorneys' fees in the amount of **\$170,000.00** (One Hundred Seventy Eight Thousand Five Hundred Dollars and Zero Cents), plus actual litigation costs, not to exceed **\$30,000.00** (Thirty Thousand Dollars and Zero Cents). To the extent attorneys' fees and costs are not approved by the Court in the amounts set forth above, and the order becomes final, then the non-approved amounts will be added to the Net Settlement Amount to be distributed based on the formula set forth in Paragraph 34.d.

c. Representative Plaintiffs' Enhancement Awards. The Parties agree that, subject to the Court's review and approval, Representative Plaintiff Wright will receive an enhancement award of **\$5,000.00**, and Representative Plaintiff Barahona will receive an enhancement award of **\$100.00**, for their services in bringing the Actions on behalf of the Aggrieved Employees, which will be paid from the Gross Settlement Fund. To the extent the Enhancement Awards are not approved by the Court in the amounts set forth above, and the order becomes final, then the non-approved amount will be added to the Net Settlement Amount to be distributed based on the formula set forth in Paragraph 34.d.

d. Net Settlement Amount: After deducting PAGA Counsel's Attorneys' Fees and Costs, Plaintiffs' Enhancement Awards, and the Settlement Administration Costs from the Gross Settlement Amount, the remaining amount will comprise the Net Settlement Amount. The Net Settlement Amount is comprised of the LWDA Payment and the PAGA Aggrieved Employee Payment. The Net Settlement Amount of approximately **\$297,150.00** shall be allocated 75% to the LWDA Payment, which is estimated to total **\$222,862.50** ($\$297,150.00 \times 75\%$). The remaining 25% of the Net Settlement Amount, estimated to total **\$74,287.50** ($\$297,150.00 \times 25\%$), shall be allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on a *pro rata* basis as noted below, which shall be referred to as the Aggrieved Employee's "**Individual PAGA Payment.**"

Example:

Aggrieved Employee A was actively employed during the PAGA Period for 25 pay periods. All Aggrieved Employees were actively employed a combined total of 10,000 pay periods during the PAGA Period. Aggrieved Employee A's Individual PAGA Payment would be calculated as follows:

- 25 pay periods for Aggrieved Employee A ÷ 10,000 total pay periods for all Aggrieved Employees = 0.025%.
- Aggrieved Employee A is entitled to an Individual PAGA Payment in an amount that is 0.025% of the PAGA Aggrieved Employee Payment.¹

e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS Form 1099.

35. Release By Aggrieved Employees and the State of California.

a. Terms of Release. Upon the Funding Date, as defined below, in exchange for the consideration recited in this Settlement Agreement, Representative Plaintiffs, as the representatives for the State of California and all Aggrieved Employees, and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns will forever completely release and discharge the Released Parties of any and all Released Claims, as defined above. The Aggrieved Employees and the State of California are deemed by operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim against any of the Released Parties for any Released Claims. The release will not be effective until Defendant has made all payments due under the terms of this Settlement Agreement.

b. No Claims Based on Stipulation and Agreement. No Aggrieved Employee will have any claim against any of the Released Parties, Defendant's counsel, the Representative Plaintiffs, or PAGA Counsel, based on errors in administering claims or performing the mailing and skip-tracing requirements of the Settlement Administrator under this Agreement.

36. General Release By Representative Plaintiffs.

¹ The Individual PAGA Payment will be rounded to the nearest penny with .5 rounded up.

1 a. Terms of Release. Upon the Funding Date, as defined below, in exchange
2 for the consideration recited in this Settlement Agreement, including the Representative Plaintiff
3 Enhancement Awards, the Representative Plaintiffs, on behalf of themselves and on behalf of their
4 current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, does
5 hereby and forever release, waive, acquit and discharge the Released Parties from all claims (known
6 or unknown) which they have, had or might otherwise have had against the Released Parties, from
7 the beginning of time to the date they sign this Agreement, regarding any aspect of their employment
8 including, but not limited to, the Released Claims, any common law or statutory torts (including
9 invasion of privacy), any federal, state or governmental constitution, statute, regulation or ordinance,
10 and any claim for wages, tips or any other compensation or benefit.

11 b. California Civil Code Section 1542. Upon the Funding Date, as defined
12 below, the Representative Plaintiffs will be deemed to have, and by operation of the Final Order and
13 Judgment will have, expressly waived and relinquished, to the fullest extent permitted by law, the
14 provisions, rights, and benefits of section 1542 of the California Civil Code which provides as
15 follows:

16 **“A general release does not extend to claims that the creditor or releasing party**
17 **does not know or suspect to exist in his or her favor at the time of executing the**
18 **release and that, if known by him or her, would have materially affected his or**
19 **her settlement with the debtor or released party.”**

20 a. No Other Actions. The Representative Plaintiffs are deemed by operation of
21 the Final Order and Judgment to have agreed not to sue or otherwise make any claim against any of
22 the Released Parties based upon any action, event, or occurrence prior to the date they sign this
23 Settlement Agreement.

24 37. Release by PAGA Counsel. Upon the Funding Date, as defined below, PAGA
25 Counsel releases on behalf of their present and former attorneys, employees, agents, successors and
26 assigns the Released Parties from all claims for attorneys’ fees and costs incurred in connection with
27 the facts and theories alleged in the Actions, the PAGA notices, and the Released Claims, except as
28 stated herein.

38. **Request For Final Order and Judgment.**

a. Upon execution of this Agreement, the Representative Plaintiffs shall promptly file a stipulation or unopposed motion with the Court requesting approval of this Settlement by submitting a proposed Final Order and Judgment, in a form substantially similar to Exhibit B.

b. The Representative Plaintiffs shall not file the stipulation or unopposed motion requesting final approval or final judgment with the Court until Defendant has reviewed and approved it, which approval will not be unreasonably withheld.

c. On the date Representative Plaintiffs file the stipulation or unopposed motion discussed in this Paragraph, Plaintiffs will also submit to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement. Plaintiffs' notice of the Settlement to the LWDA shall comply with the notice requirement of PAGA.

39. **Settlement Funding.**

a. Upon the Court entering the Final Order and Judgment, and within fourteen (14) days after the Effective Date, or soon thereafter as practicable, the Settlement Administrator shall send Defendant's counsel electronic wiring instructions to fund the Gross Settlement Amount.

b. Defendant shall wire to the Settlement Administrator the Gross Settlement Amount within twenty-one (21) days of the Effective Date (the "Funding Date").

c. Within twenty (20) days after the Funding Date, the Settlement Administrator shall issue all payments required by this Agreement (the "Payment Date").

40. **PAGA List.**

Within ten (10) days after the Effective Date, Defendant will provide a PAGA List to the Settlement Administrator which will identify all Aggrieved Employees by name, social security number, and last known home address ("PAGA List"). The PAGA List will also contain the number of pay periods credited to each Aggrieved Employee.

41. **List Of Individual Settlement Amounts.**

Within ten (10) days after the Settlement Administrator receives the PAGA List, the

1 Settlement Administrator will provide to PAGA Counsel and Defendant's counsel a Proceeds List
2 reflecting the Individual PAGA Payment for each Aggrieved Employee ("Proceeds List"). The
3 Proceeds List provided to PAGA Counsel will not include the Aggrieved Employees' names, social
4 security numbers, or contact information.

5 42. **PAGA Payments to Aggrieved Employees.**

6 a. On the Payment Date, the Settlement Administrator will mail to each
7 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
8 Notice in English and Spanish, attached as Exhibit A to this Agreement; and (b) their Individual
9 PAGA Payment (collectively, the "PAGA Packet").

10 b. Prior to mailing, the Settlement Administrator will update all addresses using
11 the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to
12 the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send
13 the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then
14 the Settlement Administrator will promptly conduct a "standard search," sometimes called, "Skip
15 Trace" or "Credit Header" searches, to locate a better address. If a better address is found, the
16 Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found
17 or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement
18 Administrator, Defendant, or PAGA Counsel shall be required to take further action.

19 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
20 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's
21 check is not cashed within that period, the settlement payment check will be voided and a stop-
22 payment will be issued. Neither Defendant, Defendant's counsel, Plaintiffs, nor PAGA Counsel
23 will have any liability for lost or stolen settlement payment checks, forged signatures on settlement
24 payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a
25 settlement payment check within the 180-day period.

26 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
27 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
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transmitted to CASA of Orange County.

43. **Payments Of Attorneys' Fees And Costs, and the LWDA Settlement Payment.**

a. On the Payment Date, the Settlement Administrator will pay from the Gross Settlement Amount the Representative Plaintiffs' Enhancement Awards as awarded by the Court. These payments will be made by sending directly to Plaintiffs checks payable to "Yvette Cherri Allison-Wright" and "Juan Carlos Barahona Murillo" in the amounts of the Court-approved Enhancement Awards.

b. On the Payment Date, the Settlement Administrator will pay from the Gross Settlement Amount to PAGA Counsel its Court-approved Attorneys' Fees and Costs.

c. On the Payment Date, the Settlement Administrator will pay the LWDA Payment from the Net Settlement Amount by issuing a check payable to "California Labor Workforce and Development Agency."

44. **Deadlines.**

If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday, the deadline will be automatically extended to the next regular business day. Unless specified otherwise, all references to "days" shall mean calendar days.

45. **Enforcement and Continuing Jurisdiction of the Court.**

Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. Even after the entry of the Final Order and Judgment, this Court will have and retain continuing jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement and all matters provided for in it, and to interpret it.

46. **Mutual Full Cooperation.**

The Parties will fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents and taking such other action as may be reasonably necessary or convenient to implement it.

1 47. **Non-Admission Of Liability.**

2 The Parties enter into this Agreement to resolve the dispute that has arisen between them
3 and to avoid the burden, expense, and risk of continued litigation. In entering into this Agreement,
4 Defendant does not admit, and specifically denies, that it has violated any federal, state, or local
5 law; violated any regulations or guidelines promulgated pursuant to any statute or any other
6 applicable laws, regulations or legal requirements; violated or breached any duty; engaged in any
7 misrepresentation or deception; or engaged in any other unlawful conduct with respect to the
8 Actions. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations
9 connected with it, shall be construed as an admission or concession by Defendant of any such
10 violations or failures to comply with any applicable law. Except as necessary in a proceeding to
11 enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered
12 or received as evidence in any action or proceeding to establish any liability or admission on the
13 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
14 compliance with, federal, state, local or other applicable law.

15 48. **Effective Date Of Defendant's Obligations Under This Agreement.**

16 Defendant's obligations under this Settlement Agreement will become final and effective
17 only upon the occurrence of the Effective Date. In the event that any of the conditions specified in
18 this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain
19 approval of the Court for any reason, all matters covered by this Agreement will be null and void.
20 In such event, neither this Agreement, nor any negotiations leading to this Settlement, will be used
21 or construed by or against any Party as a determination, admission, or concession of any issue of
22 law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
23 respective rights regarding the prosecution and defense of the Actions, including all available
24 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
25 existed.

26 49. **Nullification.**

27 If: (1) the Court should for any reason fail to enter the Final Order and Judgment; or (2) the
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1 Court's Final Order and Judgment is reversed or modified as to any material term as defined above,
2 or declared or rendered void as to any material term as defined above, then (a) the Settlement
3 Agreement shall become null and void; (b) the Parties will revert to their respective positions
4 immediately prior to reaching the settlement; and (c) Defendant will be responsible for any
5 Settlement Administration Costs. Notwithstanding, the Parties agree to cooperate in addressing the
6 Court's concerns including any amendment to this agreement that is mutually acceptable to the
7 Parties.

8 50. **Invalidation.**

9 Invalidation of any material term of this Settlement Agreement will invalidate this
10 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining
11 provisions will remain in full force and effect.

12 51. **Confidentiality/No Publicity.**

13 Representative Plaintiffs and their counsel agree that the terms of this Settlement Agreement
14 (including, but not limited to, the Gross Settlement Amount), the negotiations leading to the
15 execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be discussed
16 with or publicized or promoted to the media (including, without limitation, legal periodicals and
17 publications such as "Jury Verdicts," disclosure of the Settlement Agreement on any web site of
18 Representative Plaintiffs' counsel or any other website, or on any blogs, articles, or on any social
19 media platforms or channels), or the public at large, without the advance written consent of
20 Defendant. The Parties intend this Paragraph 51 to prohibit Plaintiffs and their counsel from
21 discussing, answering questions about, promoting or publicizing the Settlement Agreement, its
22 terms, or the negotiations leading to the Settlement Agreement with anyone other than the Court or
23 those individuals necessary to effectuate the terms of the Agreement. Notwithstanding the
24 foregoing, Representative Plaintiffs and their counsel (1) may tell the public in general only that
25 certain claims "have been resolved by the Parties;" and (2) may disclose the terms of the Settlement
26 Agreement (a) in appropriate filings with the Court in this case; (b) where required by law (*e.g.*,
27 income tax returns); and (c) to accountants or other tax professionals for the purpose of preparing
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1 tax returns. In addition, PAGA Counsel may respond to questions received from, and discuss any
2 aspect of this Agreement with Aggrieved Employees. Nothing shall prevent PAGA Counsel from
3 referring to the Actions in a declaration before the courts relating to the adequacy of counsel.

4 52. **Entire Agreement.**

5 This Settlement Agreement constitutes the entire integrated agreement between the Parties
6 relating to the Actions, and no oral representations, warranties, or inducements have been made to
7 any party concerning this Settlement Agreement other than the representations, warranties, and
8 covenants contained and memorialized in this Settlement Agreement.

9 53. **Authorization To Act.**

10 PAGA Counsel warrants and represents that they are authorized by the Representative
11 Plaintiffs, and counsel of record for Defendant warrants that they are authorized by Defendant, to
12 take all appropriate action required or permitted to be taken by such Parties pursuant to this
13 Settlement Agreement to effectuate its terms, and to execute any other documents required to
14 effectuate the terms of this Settlement Agreement, except for any documents, including but not
15 limited to this Settlement Agreement, that are required to be executed by the Parties.

16 54. **Modification Only In Writing.**

17 This Settlement Agreement may be amended or modified only by a written instrument signed
18 by all Parties or their successors in interest.

19 55. **Binding On Successors.**

20 This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this
21 Agreement, as well as their respective attorneys, past, present, and future predecessors, successors,
22 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
23 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or
24 affiliated entities.

25 56. **No Prior Assignments.**

26 The Aggrieved Employees are deemed by operation of the Final Order and Judgment to
27 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
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1 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
2 liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

3 57. **Governing Law.**

4 All terms of this Settlement Agreement will be governed by and interpreted according to the
5 laws of the State of California, without giving effect to conflicts of laws principles.

6 58. **Counterparts.**

7 This Settlement Agreement may be executed in one or more counterparts. All executed
8 counterparts and each of them will be deemed to be one and the same instrument. Counsel for the
9 Parties will exchange among themselves any signed counterparts.

10 59. **Headings For Convenience Only.**

11 The descriptive headings of any paragraphs or sections of this Settlement Agreement are
12 inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

13 60. **Construction Of This Agreement.**

14 The Parties agree that the terms and conditions of this Settlement Agreement are the result
15 of arms-length negotiations between the Parties and that this Settlement Agreement will not be
16 construed in favor of or against any Party by reason of the extent to which any Party, or her or its
17 counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the
18 entire agreement between the Parties. Except as expressly provided in this Agreement, this
19 Settlement Agreement has not been executed in reliance upon any other oral or written
20 representations or terms and no such extrinsic oral or written representations or terms will modify,
21 vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement,
22 the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil
23 Procedure section 1856(a), which provide that a written agreement is to be construed according to
24 its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiffs
25 and Defendant had available to them the advice and assistance of independent counsel. As such,
26 neither Representative Plaintiffs nor Defendant may claim that any ambiguity in this Settlement
27 Agreement should be construed against the other.

1 61. **Corporate Signatories.**

2 Any person executing this Settlement Agreement or any related document on behalf of a
3 corporate signatory warrants and promises for the benefit of all Parties that such person has been
4 duly authorized by such corporation to execute this Settlement Agreement or any related document.

5 62. **Representation By Counsel.**

6 All of the Parties hereto acknowledge that they have been represented by counsel throughout
7 all negotiations which preceded the execution of this Settlement Agreement and that this Agreement
8 has been executed with the consent and advice of counsel.

9 63. **Attorneys' Fees And Costs.**

10 Except as otherwise provided in this Agreement, the Parties will bear responsibility for their
11 own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of the Actions
12 and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event
13 of a proven breach of this Agreement, the breaching party will be required to pay the prevailing
14 Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

15 [SIGNATURE PAGE TO FOLLOW]
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1 **IT IS SO AGREED:**

2 DATED: 06 / 27 / 2024, 2024

JUAN CARLOS BARAHONA MURILLO



Representative Plaintiff

5 DATED: _____, 2024

YVETTE CHERRI ALLISON-WRIGHT

Representative Plaintiff

8 DATED: _____, 2024

APERTO PROPERTY MANAGEMENT,
INC.

Ed Quigley
CEO

12 DATED: _____, 2024

APPROVED AS TO FORM AND
AGREEMENT TO BE BOUND BY
PARAGRAPHS 37 & 51:

BIBIYAN LAW GROUP, P.C.
Vedang J. Patel
Counsel for Plaintiff Wright

17 DATED: June 25, 2024

APPROVED AS TO FORM AND
AGREEMENT TO BE BOUND BY
PARAGRAPHS 37 & 51:



CROSNER LEGAL, PC
Sepideh Ardestani
Counsel for Plaintiff Barahona

23 DATED: _____, 2024

RUTAN & TUCKER, LLP

Kenneth J. Zielinski
Counsel for Defendant Aperto Property
Management, Inc.

1 **IT IS SO AGREED:**

2 DATED: _____, 2024

JUAN CARLOS BARAHONA MURILLO

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4
5 DATED: 07/2/2024, 2024

Representative Plaintiff

YVETTE CHERRI ALLISON-WRIGHT



Yvette Allison-Wright (Jul 2, 2024 16:11 PDT)

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7
8 DATED: _____, 2024

Representative Plaintiff

APERTO PROPERTY MANAGEMENT,
INC.

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11
12 DATED: June 3, 2024

Ed Quigley
CEO

APPROVED AS TO FORM AND
AGREEMENT TO BE BOUND BY
PARAGRAPHS 37 & 51:



BIBIYAN LAW GROUP, P.C.

Vedang J. Patel

Counsel for Plaintiff Wright

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14
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16
17 DATED: _____, 2024

APPROVED AS TO FORM AND
AGREEMENT TO BE BOUND BY
PARAGRAPHS 37 & 51:

CROSNER LEGAL, PC

Sepideh Ardestani

Counsel for Plaintiff Barahona

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19
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21
22
23 DATED: _____, 2024

RUTAN & TUCKER, LLP

Kenneth J. Zielinski

Counsel for Defendant Aperto Property
Management, Inc.

1 **IT IS SO AGREED:**

2 DATED: _____, 2024

JUAN CARLOS BARAHONA MURILLO

3
4 _____
Representative Plaintiff

5 DATED: _____, 2024

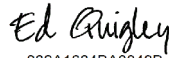
YVETTE CHERRI ALLISON-WRIGHT

6
7 _____
Representative Plaintiff

8 DATED: July 5, 2024, 2024

APERTO PROPERTY MANAGEMENT,
INC.

DocuSigned by:

10 

882A1684BA0049B...

11 Ed Quigley
CEO

12 DATED: _____, 2024

APPROVED AS TO FORM AND
AGREEMENT TO BE BOUND BY
PARAGRAPHS 37 & 51:

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15 _____
BIBIYAN LAW GROUP, P.C.

Vedang J. Patel

Counsel for Plaintiff Wright

16
17 DATED: _____, 2024

APPROVED AS TO FORM AND
AGREEMENT TO BE BOUND BY
PARAGRAPHS 37 & 51:

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20 _____
CROSNER LEGAL, PC

Sepideh Ardestani

Counsel for Plaintiff Barahona

21
22
23 DATED: July 5, 2024

RUTAN & TUCKER, LLP

24 

25 Edson K. McClellan

26 Counsel for Defendant Aperto Property
Management, Inc.

EXHIBIT

2



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (866) 276-7637
fax: (310) 510-6429

March 16, 2023

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:

CSC - Lawyers Incorporating Service
Agent for Service of Process for:
Aperto Property Management, Inc.
251 Little Falls Drive
Wilmington, DE 19808

**Aperto Property Management,
Inc.**

Attn: Human Resources / Legal
Department
2 Venture Suite 525
Irvine, CA 92618

Aperto Property Management, Inc.

Attn: CA Registered Agent Authorized Employees: Becky
DeGeorge, Koy Saechao, Lai Saevang, Nicole Stauss, Jenn
Bautista, Trudy Desbiens, Rebecca Vang, Wendy Harris,
Melissa Dekoven, Carolyn Valle, Kaci Ransom, Kelli
Shortte, Annette Kuhlman, Brejet Stephens, Crystal
Chapman, Janette McIntyre, Jerome Suarez, Samantha
Wiltz, and Parid Kurbini
2710 Gateway Oaks Drive
Sacramento, CA 95833

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Aperto Property
Management, Inc.
Date: March 16, 2023
Subject: *Juan Carlos Barahona Murillo v. Aperto Property Management, Inc.*

Introduction

This office represents COMPLAINANT, Juan Carlos Barahona Murillo (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: Aperto Property Management, Inc. (hereinafter, this entity and its 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 any one or more of the EMPLOYER entities at any location 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 any one or more of the EMPLOYER entities at any location 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. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

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, 245-248.6, 432, 432.5, 432.7, 510, 512, 515, 558, 558.1, 970, 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 and/or otherwise manages a property management company specializing in the management of residential communities and/or properties. EMPLOYER owns operates and/or otherwise manages at least 170 locations, properties, facilities and/or communities in California, including but not limited to, EMPLOYER's location, property, facility and/or community operating under the name "Woodglen Apartments" and/or "Woodglen Apartment Homes," located in West Covina, California, where EMPLOYER regularly assigned COMPLAINANT to work during the relevant period.¹ Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

¹ See https://www.apertoliving.com/our_communities/ (Last visited on March 15, 2023).

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a maintenance technician and/or similar title(s) from in or around July 2021 through on or around September 20, 2022, when EMPLOYER terminated COMPLAINANT's employment. EMPLOYER regularly assigned COMPLAINANT to work out of EMPLOYER's location, property, facility and/or community operating under the name "Woodglen Apartments" and/or "Woodglen Apartment Homes," located in West Covina, California. COMPLAINANT regularly worked at least nine (9) hours per day, at least five (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 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 (14) 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).

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, through counsel sent a written 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

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

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, COMPLAINANT was consistently forced to cut any meal breaks short and/or work through his owed meal periods completely due to the nature of his work and/or lack of relief workers available to perform work tasks that had to be done immediately, the need to address property maintenance situations/fill maintenance orders, respond to tenant/resident inquiries/concerns and/or other work communications and/or complete other work tasks. Also, COMPLAINANT was consistently forced to take any meal periods late (i.e. after working more than five (5) hours). For example, EMPLOYER's time records for COMPLAINANT show a clock out for meal period(s) past the fifth hour of work. Further, EMPLOYER required COMPLAINANT to monitor his phone for work communications at all times during his shifts, including during unpaid meal periods, and any meal periods were typically interrupted due to the need to respond to work-related phone calls/messages and/or complete other work tasks. Based on information and belief, at times, EMPLOYER adjusted, rounded, doctored, and/or manipulated COMPLAINANT's time records and/or COMPLAINANT's reported time to make it appear as though COMPLAINANT took an off-duty meal period lasting at least thirty-minutes (typically at least sixty minutes) before the end of the fifth hour of work, on most if not all shifts he worked, when in fact, COMPLAINANT, rarely, if ever, received a timely, full uninterrupted thirty-minute, off-duty meal period during the relevant period.

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. For example, EMPLOYER required COMPLAINANT to monitor his work phone for work communications at all times during his shifts, including during unpaid meal periods. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to monitor work communication devices and/or remain tethered to their worksites during unpaid meal periods. As such, NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties and EMPLOYER's control during unpaid meal periods, resulting in meal period violations and off-the-clock work.

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

AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

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

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift (typically at least sixty minutes) 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 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").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot

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").

include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to its employees.”).

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT was consistently forced to cut any rest breaks short and/or work through his owed rest periods completely due to the nature of his work and/or lack of relief workers available to perform work tasks that had to be done immediately, the need to address property maintenance situations/fill maintenance orders, respond to tenant/resident inquiries/concerns and/or other work communications and/or complete other work tasks. In fact, COMPLAINANT rarely, if ever, received a full ten-minute off-duty rest period during the relevant period.

Moreover, on information and belief, EMPLOYER failed to authorize and permit rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law. EMPLOYER’s failure to communicate that the rest period is a net ten minutes deprived NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to a full rest period, as such as policy only relieves NON-EXEMPT AGGRIEVED EMPLOYEES from their workstation for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten minutes.

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

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

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods. For example, EMPLOYER required COMPLAINANT to monitor his work phone for work communications at all times during his shifts, including during any purported rest periods. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to monitor work communication devices and/or remain tethered to their worksites during any purported rest periods. As such, NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties and EMPLOYER's control during any rest periods, in violation of California's rest period law,

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.

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”).

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. 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 have the effect of reducing the agreed upon wage. 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 for shift start and shift end times and meal period start and end times, 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. For example, as explained above, COMPLAINANT was consistently forced to cut any meal breaks short and/or work through his unpaid meal periods completely due to the nature of his work and/or lack of relief workers available to perform work tasks that had to be done immediately, the need to address property maintenance situations/fill maintenance orders, respond to tenant/resident inquiries/concerns and/or other work communications and/or complete other work tasks, resulting in EMPLOYER's failure to compensate COMPLAINANT for all hours worked and the underpayment of minimum wages owed to COMPLAINANT. Also, EMPLOYER required COMPLAINANT to monitor his phone for work communications at all times during his shifts, including during unpaid meal periods, and any meal periods were typically interrupted due to the need to respond to work-related phone calls/messages and/or complete other work tasks. As such, COMPLAINANT was not relieved of all duties and EMPLOYER's control during unpaid meal periods resulting in the failure to compensate COMPLAINANT for all hours worked and the underpayment of minimum wages owed to COMPLAINANT.

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 (typically at least sixty minutes) for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, based on information and belief, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for additional time spent performing pre-shift and/or post-shift off-the-clock work/work outside of their scheduled shifts. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated all owed minimum and overtime wages for all time spent performing work duties outside of their scheduled shift and/or time spent on call. For example, COMPLAINANT was required to monitor his work phone at all times during his shifts as well as outside of his scheduled shifts, including but not limited to, on purported days off and/or on what were supposed to be vacation days/days off. COMPLAINANT would regularly have to attend to emergency situations on EMPLOYER's premises and/or fill maintenance requests and/or assist tenants and/or perform other work tasks after hours/outside of his scheduled shift times without being compensated for all on-call time/time spent performing work duties outside of his scheduled shift times. For example, at times, COMPLAINANT spent at least several hours per day performing work tasks after hours/outside of his scheduled shift times but was not compensated for all said time performing work tasks after hours/outside of his scheduled shift times, resulting in consistent off-the-clock work and the underpayment of minimum wages owed to COMPLAINANT.

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

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

Based on information and belief, at times, some NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to those working as property managers, onsite property managers, community managers and/or similar title(s) were misclassified by EMPLOYER as exempt and compensated on a salary basis when they were in fact non-exempt employees. Based on information and belief, at times, EMPLOYER misclassified some NON-EXEMPT AGGRIEVED EMPLOYEES as exempt employees to try to evade California wage and hour laws including but not limited to, payment of minimum and overtime wages and provision of meal and rest periods even though misclassified NON-EXEMPT AGGRIEVED EMPLOYEES did not satisfy any test for exemption under California law. For example, based on information and belief, misclassified NON-EXEMPT AGGRIEVED EMPLOYEES did not regularly exercise discretion/independent judgment in their jobs and typically spent more than fifty percent of their workday performing non-exempt duties such as, but not limited to, answering phone calls, scheduling workers, collecting signatures on documents/clerical/ministerial duties, and/or other non-discretionary duties not requiring the exercise of independent judgment to perform.

Based on further information and belief, misclassified NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated with a monthly salary (exclusive of the value of any lodging) that equated to twice the California minimum wage rate. See, Labor Code section 515 and Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment”].

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES that were paid on a salary basis and/or otherwise misclassified as exempt were denied all owed minimum wages due to EMPLOYER’s misclassification scheme.

Violation of IWC Wage Order Section 10:

Section 10 of all applicable IWC Wage Orders states that “lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee.” Case law indicates that the agreement must state that the employer will credit lodging against the employee’s wages. See, *Von Nothdurft v. Steck* (2014) 227 Cal.App.4th 524 (2014) (the employer and the employee “must voluntarily agree to credit lodging against the employee’s wages.”) Assuming the existence of such a voluntary written agreement, Section 10 of IWC Wage Order 5-2001 (and all applicable IWC Wage Orders) sets forth the maximum amounts that can be credited for lodging against the minimum wage.

Based on information and belief, EMPLOYER had and has a policy and practice of unlawfully crediting lodging against the minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, resulting in the underpayment of minimum wages owed to NON-EXEMPT EMPLOYEES. For example, based on information and belief, EMPLOYER credits lodging towards its minimum wage obligations to NON-EXEMPT AGGRIEVED EMPLOYEES that exceeds the maximum allowable rental credit under California law and/or EMPLOYER fails to execute voluntary written agreement(s) to credit lodging against its minimum wage obligations

due to, including but not limited to, failure to explicitly state that the rental credit is being applied towards the employer's minimum wage obligations and/or failure to execute any voluntary written agreement, as required under California law. See Section 10 of IWC Wage Order Section 5-2001 (and all applicable IWC Wage Orders).

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 and/or other unlawful policies and practices described above, 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 and/or other unlawful policies and practices described above, 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.

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").

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, 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 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.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES that were paid on a salary basis and/or otherwise misclassified as exempt were denied all owed overtime wages due to EMPLOYER's misclassification scheme.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §3(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

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

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 work completed during unpaid meal periods 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 EMPLOYEE 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 for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

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

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

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

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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).

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 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by EMPLOYER failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

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

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

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).

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.

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

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

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

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

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

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

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/or EXEMPT AGGRIEVED EMPLOYEES paychecks, including but not limited to, from paychecks of employees correctly classified as exempt, during the relevant period, including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or deducting costs advanced by EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' final paychecks. 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 EMPLOYEES and each EXEMPT AGGRIEVED EMPLOYEES, 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.

Moreover, EMPLOYER failed to timely provide all owed wages immediately upon discharge of employment. For example, based on information and belief, at times, NON-EXEMPT

AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES experienced breaks in their employment caused by EMPLOYER whereby NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to EMPLOYER's lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, EMPLOYER failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

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

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

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

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide

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

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, including but not limited to, use of NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' personal mobile phones/mobile devices/internet/data plan charges and costs associated with the purchase and/or maintenance of work uniforms/work clothing and shoes and/or safety/protective gear. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES received work-related calls and/or messages to their personal phones from managers and/or supervisors, including but not limited to, regarding scheduling/other work tasks but were not reimbursed by EMPLOYER for these business expenses as required under California Law.

Also, EMPLOYER did not reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for the costs they incurred in having to purchase/maintain their own work tools, including but not limited to, hand tools, power tools and/or equipment, cleaning tools/supplies and/or maintenance tools/supplies they required to perform their assigned job duties. For example, COMPLAINANT was required to supply most if not all of the tools required to perform his assigned job duties without receiving any/full reimbursement from EMPLOYER for the costs he incurred in connection with having to purchase, repair and/or maintain the personal tools and/or equipment EMPLOYER required he use to perform his job duties.

Based on information and belief, EMPLOYER did not reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all cell phone/mobile device, data plan charges incurred in the performance of their job duties.

Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES incurred expenses associated with being required to use their personal vehicles for work without receiving full reimbursement from EMPLOYER for the costs they incurred in connection therewith. For example, based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to drive their personal vehicles between EMPLOYER's various locations/complexes and/or for other work-related purposes without reimbursing NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all vehicle-related expenses they incurred as a direct consequence thereof, including but not limited to, gas, mileage, and vehicle wear and tear. Based on information and belief, at times, EMPLOYER purported to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for vehicle-related expenses, but any amount offered fell far below the Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period and/or otherwise failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for all reasonable vehicle-related expenses they were required to incur in performing their jobs.

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/work clothing/work shoes, personal protective/safety gear.

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.

Violation of Labor Code Section 970

Labor Code section 970 prohibits an employer from knowingly making false representations about the nature or existence of work, continued employment and/or compensation to induce an employee to move/relocate in reliance thereon. Specifically, Labor Code section 970 provides:

No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either:

- (a) The kind, character, or existence of such work;
- (b) The length of time such work will last, or the compensation therefor;

Based on information and belief, EMPLOYER has a policy and practice of knowingly making false representations to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT

AGGRIEVED EMPLOYEES regarding obtaining/continued employment, the nature of work to be performed and/or the terms of their compensation to influence, persuade or engage its employees to relocate/move for purposes of employment, in violation of Labor Code section 970.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

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Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, reading "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "prelit@crosnerlegal.com" <prelit@crosnerlegal.com>

Thu, Mar 16, 2023 at 3:49 PM

3/16/2023

LWDA Case No. LWDA-CM-942494-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Juan Carlos Barahona Murillo
Employer: Aperto Property Management, Inc
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

3

EXHIBIT

4

Attorney	Category	Description	Rate	Time	Total
Sepideh Ardestani	Administrative	Emails with co counsel and OC re mediation	\$700	0.5	\$350.00
Kiara Bramasco	Motions/Pleadings	Drafting PAGA only complaint	\$650	4.8	\$3,120.00
Kiara Bramasco	Other	Emails with referring atty	\$650	0.2	\$130.00
Kiara Bramasco	Other	Email re records request and link to upload	\$650	0.3	\$195.00
		Records review, reviewing company size and			
Kiara Bramasco	Other	any pre-existing cases	\$650	1.4	\$910.00
Branden Hamilton	Other	Draft PAGA Notice	\$650	4.2	\$2,730.00
		Prelit case analysis - research debt, preexisting			
		case search, records review/analyze arb			
		agreement, draft/respond to internal email			
Branden Hamilton	Other	correspondence re same	\$650	1.7	\$1,105.00
Jamie Serb	Mediation	Review mediation brief and damage analysis	\$750	1.2	\$900.00
		Review case file and assign to handling			
Jamie Serb	Case Management	associate	\$750	1.2	\$900.00
Jamie Serb	Case Management	em discussion w/associate re strategy	\$750	0.3	\$225.00
Jamie Serb	Case Management	em to OC re service list	\$750	0.1	\$75.00
Jamie Serb	Case Management	internal discussion re top filing case	\$750	0.2	\$150.00
Jamie Serb	Case Management	discussion w/associate re mediation	\$750	0.2	\$150.00
		review ems from admin re service of			
Jamie Serb	Case Management	complaint packet	\$750	0.2	\$150.00
Jamie Serb	Case Management	review case assignment	\$750	0.1	\$75.00
Jamie Serb	Case Management	review proof of service	\$750	0.1	\$75.00
Jamie Serb	Case Management	review minute order	\$750	0.1	\$75.00
Jamie Serb	Case Management	review correspondence from OC re Answer	\$750	0.1	\$75.00
Jamie Serb	Case Management	internal discussion re top filed case	\$750	0.3	\$225.00
		review JPA and associated emails, discuss with			
Jamie Serb	Case Management	associate	\$750	0.4	\$300.00
Jamie Serb	Case Management	internal discussion re mediation	\$750	0.1	\$75.00
Jamie Serb	Settlement	review MOU draft	\$750	0.2	\$150.00
Jamie Serb	Settlement	review discussion re SA and edits to SA	\$750	1.1	\$825.00

Jamie Serb	Case Management	internal email discussion re approval motion	\$750	0.1	\$75.00
Jamie Serb	Case Management	internal discussion re approval motion	\$750	0.8	\$600.00
Jamie Serb	Case Management	discussion re approval motion	\$750	1.1	\$825.00
		internal discussion re approval motion			
Jamie Serb	Case Management	declaration, remaining docs needed	\$750	0.1	\$75.00
Sepideh Ardestani	Mediation	attend mediation	\$700	10	\$7,000.00
Sepideh Ardestani	Mediation	draft mediation brief	\$700	5	\$3,500.00
Sepideh Ardestani	Mediation	calls/emails with expert re damage model	\$700	0.8	\$560.00
		calls with client re mediation and reviewing facts for mediation brief			
Sepideh Ardestani	Mediation		\$700	0.8	\$560.00
		review informal discovery produced in advance of mediation			
Sepideh Ardestani	Discovery		\$700	3.5	\$2,450.00
Sepideh Ardestani	Settlement	draft MOU	\$700	1.5	\$1,050.00
Sepideh Ardestani	Settlement	draft settlement agreement	\$700	5.5	\$3,850.00
Sepideh Ardestani	Case Management	draft stip to continue cmc	\$700	1.5	\$1,050.00
Sepideh Ardestani	Case Management	draft JPA	\$700	1.5	\$1,050.00
Sepideh Ardestani	Client update	call with client re case update	\$700	0.4	\$280.00
Sepideh Ardestani	Client update	call with client re case update	\$700	0.4	\$280.00
Sepideh Ardestani	Case Management	draft stip to consolidate actions	\$700	2.5	\$1,750.00
Sepideh Ardestani	Case Management	draft stip to transfer venue	\$700	2.5	\$1,750.00
Sepideh Ardestani	Mediation	call with OC re mediation	\$700	0.4	\$280.00
Sepideh Ardestani	Mediation	call with co counsel re mediation	\$700	0.5	\$350.00
Sepideh Ardestani	Case Management	call with managing partner re case strategy	\$700	0.5	\$350.00
Sepideh Ardestani	Case Management	zoom with managing partner re case strategy	\$700	0.5	\$350.00
Zach Crosner	Other	Reviewed intake, records produced by client, follow up info, research specific issues	\$800	3.7	\$2,960.00
		Research & discuss case theories, previous cases against company, etc., previously filed			
Zach Crosner	Research	cases search	\$800	2.5	\$2,000.00
Zach Crosner	Motions/Pleadings	Review of PAGA Notice	\$800	2.1	\$1,680.00

Zach Crosner	Motions/Pleadings	Review/revisions of complaint, entities to include	\$800	4.3	\$3,440.00
Zach Crosner	Motions/Pleadings	Review of Def's answer to complaint	\$800	0.7	\$560.00
		Discussion & research related re. counsel in another case about potential overlapping claims	\$800	2.8	\$2,240.00
Zach Crosner	Case Management	Further analysis & discussion re. previously filed cases	\$800	0.9	\$720.00
Zach Crosner	Mediation	Internal discussions re. mediation, mediator proposal, scheduling etc.	\$800	1.3	\$1,040.00
Zach Crosner	Mediation	Review informal discovery requests for mediation	\$800	0.7	\$560.00
Zach Crosner	Mediation	Review of defendant's mediation production	\$800	4.9	\$3,920.00
Zach Crosner	Mediation	Review/discussions of expert's exposure analysis	\$800	2.8	\$2,240.00
Zach Crosner	Mediation	Review mediation brief & mediation prep	\$800	3.6	\$2,880.00
Zach Crosner	Settlement	Review/revise approval motion and accompanying moving papers	\$800	2.8	\$2,240.00
Sepideh Ardestani	Research	research case law re jt employer theory liability	\$700	2.5	\$1,750.00
		research case law re property managers and overtime/straight time			
Sepideh Ardestani	Research		\$700	0.6	\$420.00
TOTAL:				95.1	\$69,650.00