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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

NICHOLE VELAZQUEZ-
MORROW, as an aggrieved employee
pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of
the State of California and other non-
party Aggrieved Employees,

Plaintiff,

vs.

ORANGEWOOD FOUNDATION, a
California corporation and DOES 1
through 10, inclusive,

Defendants.

Case No.: 30-2023-01327022-CU-OE-CXC

Judge Peter Wilson

CX-101

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Nichole Velazquez-Morrow, as an aggrieved employee and on behalf of the
2 State of California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on March 14, 2023, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants filed Statement of
3 Information forms with the California Secretary of State designating a principal place of
4 business in Santa Ana, County of Orange, in accordance with California Corporations Code
5 section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because
6 Defendants employ persons in this county, and employed Plaintiff in this county, and thus a
7 substantial portion of the transactions and occurrences related to this action occurred in this
8 county.

9 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
10 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
11 attorneys general their current or former employers for various civil penalties for violations of
12 various provisions in the California Labor Code.

13 **THE PARTIES**

14 6. Plaintiff Nichole Velazquez-Morrow is a resident of Covina, in Los Angeles
15 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee
16 from approximately June 2022 to September 2022. Plaintiff worked as a Youth Support
17 Specialist and, subsequently, as a Case Manager for Defendants at their location in Santa Ana,
18 California. Plaintiff typically worked eight (8) hours per day or more, and five (5) days per
19 week. At the time Plaintiff’s employment with Defendants ended, she was compensated
20 approximately \$24.10 per hour. Plaintiff’s job duties included, without limitation, assisting
21 youth clients with housing, job applications, and resumés; distributing hot meals and food
22 pantry and hygiene items; assisting drop-in youth with urgent matters; and case management.

23 7. On information and belief, Defendants required some employees, including
24 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
25 employment. On further information and belief, Defendants’ arbitration agreement was and is
26 both procedurally and substantively unconscionable. Specifically, Defendants presented
27 employees with a “DISPUTE RESOLUTION AND ARBITRATION AGREEMENT”
28 (“Arbitration Agreement”) during the onboarding process, which had to be reviewed and

1 acknowledged immediately. Specifically, on information and belief, the Arbitration
2 Agreement was one of several documents presented to new employees for signature during the
3 orientation process, including Orangewood Foundation's Whistleblower Policy, Automobile
4 Insurance Agreement, and Employee Computer Use Agreement, among other documents.
5 Also, employees did not have a meaningful opportunity to negotiate the terms of the
6 Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on
7 a take-it or leave-it basis, along with all of the other on-boarding documents.

8 8. ORANGEWOOD FOUNDATION was and is, upon information and belief, a
9 California corporation, and at all times hereinafter mentioned, an employer whose employees
10 are engaged throughout this county, the State of California.

11 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
12 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
13 amend the complaint and serve such fictitiously named Defendants once their names and
14 capacities become known.

15 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
16 were the partners, agents, owners, or managers of ORANGEWOOD FOUNDATION at all
17 relevant times.

18 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
19 acts and omissions alleged herein was performed by, or is attributable to, ORANGEWOOD
20 FOUNDATION and/or DOES 1 through 10 (collectively, "Defendants" or
21 "ORANGEWOOD"), each acting as the agent, employee, alter ego, and/or joint venturer of,
22 or working in concert with, each of the other co-Defendants and was acting within the course
23 and scope of such agency, employment, joint venture, or concerted activity with legal
24 authority to act on the others' behalf. The acts of any and all Defendants were in accordance
25 with, and represent, the official policy of Defendants.

26 12. At all relevant times, Defendants, and each of them, ratified each and every act
27 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
28 and abetted the acts and omissions of each and all the other Defendants in proximately causing

1 the damages herein alleged.

2 13. Plaintiff is informed and believes, and thereon alleges, that each of said
3 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
4 omissions, occurrences, and transactions alleged herein.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 14. Defendants serve current and former foster youth in Orange County by
7 providing health, wellness, housing, education, life skills, and employment assistance. Upon
8 information and belief, Defendants maintain a single, centralized Human Resources (HR)
9 department at their corporate headquarters in Santa Ana, California, for all non-exempt,
10 hourly paid employees working for Defendants in California, which is responsible for the
11 recruiting and hiring of new employees, and communicating and implementing Defendants'
12 company-wide policies, including timekeeping policies and meal and rest period policies, to
13 employees throughout California.

14 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
15 information and belief, received the same standardized documents and/or written policies.
16 Upon information and belief, the usage of standardized documents and/or written policies,
17 including new-hire documents, indicate that Defendants dictated policies at the corporate level
18 and implemented them company-wide, regardless of their employees' assigned locations or
19 positions. Upon information and belief, Defendants set forth uniform policies and procedures
20 in several documents provided at an employee's time of hire.

21 16. Upon information and belief, Defendants maintain a centralized Payroll
22 department at their corporate headquarters in Santa Ana, California, which processes payroll
23 for all non-exempt, hourly paid employees working for Defendants at their various locations
24 in California, including Plaintiff and other non-party Aggrieved Employees. Based upon
25 information and belief, Defendants issue the same formatted wage statements to all non-
26 exempt, hourly paid employees in California, irrespective of their work locations. Upon
27 information and belief, Defendants process payroll for departing employees in the same
28 manner throughout the State of California, regardless of the manner in which each employee's

1 employment ends.

2 17. Defendants continue to employ non-exempt or hourly paid employees in
3 California.

4 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
6 and advisors knowledgeable about California labor and wage law, employment and personnel
7 practices, and about the requirements of California law.

8 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
9 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
10 were not recorded.

11 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive certain wages for overtime compensation and that they were not receiving certain
14 wages for overtime compensation.

15 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
18 meal and rest period premiums, that included as eligible income all remuneration required by
19 law, including but not limited to, all income derived from incentive pay, nondiscretionary
20 bonuses, and/or other forms of compensation, but failed to include all forms of remuneration
21 in calculating the regular rate of pay for Plaintiff and other non-party Aggrieved Employees.

22 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive at least minimum wages for compensation and that they were not receiving at least
25 minimum wages for work that was required to be done off-the-clock. In violation of the
26 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
27 least minimum wages for work done off-the-clock.

28 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
3 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
4 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
5 other non-party Aggrieved Employees were not provided with all meal periods or payment of
6 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
7 uninterrupted, thirty (30) minute meal period.

8 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
11 payment of one (1) additional hour of pay at their regular rates of pay when they were not
12 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
13 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
14 provided payment of one (1) additional hour of pay at their regular rates of pay when they
15 were not authorized and permitted to take a compliant rest period.

16 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 receive complete and accurate wage statements in accordance with California law. In
19 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
20 were not provided complete and accurate wage statements.

21 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that they had a duty to maintain accurate and complete payroll records in
23 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
24 and intentionally failed to do so.

25 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 timely payment of wages during their employment. In violation of the California Labor Code,
28 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,

1 including, but not limited to, overtime wages, minimum wages, meal and rest period
2 premiums, and/or sick leave pay, within permissible time periods.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 timely payment of all wages earned upon termination of employment. In violation of the
6 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
7 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
8 meal and rest period premiums, and/or sick leave pay, within permissible time periods.

9 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible income,
12 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
13 compensation, but failed to include all forms of remuneration in calculating the regular rate of
14 pay for sick leave pay.

15 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 receive reimbursement for all business-related expenses and costs they incurred during the
18 course and scope of their employment and that they did not receive reimbursement of
19 applicable business-related expenses and costs incurred.

20 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants knew or should have known that they had a duty to compensate
22 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
23 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
24 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
25 that they were properly denied wages, all in order to increase Defendants' profits.

26 32. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the LWDA for violations of the California Labor Code and

1 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
2 civil action brought on behalf of themselves and other current or former employees pursuant
3 to procedures outlined in California Labor Code section 2699.3.

4 33. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
5 person who was employed by the alleged violator and against whom one or more of the
6 alleged violations was committed.”

7 34. Plaintiff and other current and former employees of Defendants are “aggrieved
8 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
9 or former employees and one or more of the alleged violations were committed against them.

10 35. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
11 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
12 following requirements have been met:

- 13 (a) The aggrieved employee shall give written notice by online filing
14 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
15 to the employer of the specific provisions of the California Labor Code
16 alleged to have been violated, including the facts and theories to support
17 the alleged violations.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(a) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
22 employer and the aggrieved employee by certified mail that it does not
23 intend to investigate the alleged violation within sixty (60) calendar
24 days of the postmark date of the Employee’s Notice. Upon receipt of
25 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
26 five (65) calendar days of the postmark date of the Employee’s Notice,
27 the aggrieved employee may commence a civil action pursuant to
28 California Labor Code section 2699 to recover civil penalties in addition

1 to any other penalties to which the employee may be entitled.

2 36. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
3 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
4 provision other than those listed in Section 2699.5 after the following requirements have been
5 met:

6 (a) The aggrieved employee or representative shall give written notice by
7 online filing to the LWDA and by certified mail to the employer of the
8 specific provisions of the California Labor Code alleged to have been
9 violated (other than those listed in Section 2699.5), including the facts
10 and theories to support the alleged violation.

11 (b) An aggrieved employee's notice filed with the LWDA pursuant to
12 2699.3(c) and any employer response to that notice shall be
13 accompanied by a filing fee of seventy-five dollars (\$75).

14 (c) The employer may cure the alleged violation within thirty-three (33)
15 calendar days of the postmark date of the notice. The employer shall
16 give written notice by certified mail within that period of time to the
17 aggrieved employee or representative and the agency if the alleged
18 violation is cured, including a description of actions taken, and no civil
19 action pursuant to Section 2699 may commence. If the alleged violation
20 is not cured within the 33-day period, the employee may commence a
21 civil action pursuant to Section 2699.

22 37. On March 14, 2023, Plaintiff provided written notice by online filing to the
23 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
24 Code alleged to have been violated, including facts and theories to support the alleged
25 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
26 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
27 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
28 Plaintiff PAGA Case Number LWDA-CM-941994-23. A true and correct copy of Plaintiff's

1 written notice to the LWDA and Defendants dated March 14, 2023, is attached hereto as
2 “Exhibit 1.”

3 38. As of the filing date of this complaint, over 65 days have passed since Plaintiff
4 sent the written notice described above, and the LWDA has not responded that it intends to
5 investigate Plaintiff’s claims, and Defendants have not cured the violations.

6 39. Thus, Plaintiff has satisfied the administrative prerequisites under California
7 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
8 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
9 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

10 40. Labor Code section 558(a) provides “[a]ny employer or other person acting on
11 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
12 provision regulating hours and days of work in any order of the Industrial Welfare
13 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
14 dollars (\$50) for each underpaid employee for each pay period for which the employee was
15 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
16 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
17 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
18 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
19 as a private attorney general, seeks assessment and collection of civil penalties under Labor
20 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
21 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
22 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
23 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
24 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
25 applicable IWC Wage Order.

26 41. Defendants, at all times relevant to this complaint, were employers or persons
27 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
28 Employees’ rights by violating various sections of the California Labor Code as set forth

1 above.

2 42. As set forth below, Defendants have violated numerous provisions of both the
3 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
4 Order.

5 43. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
6 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
7 private attorney general, seeks assessment and collection of civil penalties for herself, all other
8 non-party Aggrieved Employees, and the State of California against Defendants for violations
9 of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516,
10 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

11 **FIRST CAUSE OF ACTION**

12 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

13 **(Against all Defendants)**

14 44. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 45. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
17 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
18 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
19 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
20 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
21 Labor Code sections not found in section 2699.5, including sections 246, 516 and 1182.12.

22 46. Defendants’ conduct, as alleged herein, violates numerous sections of the
23 California Labor Code, including, but not limited to, the following:

24 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
25 Wage Order for Defendants’ failure to compensate Plaintiff and other
26 non-party Aggrieved Employees with all required overtime pay, as set
27 forth below;

28 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to include all forms
2 of remuneration in the "regular rate" of pay as required by law for
3 purposes of paying overtime wages and/or meal and rest period
4 premiums to Plaintiff and other non-party Aggrieved Employees, as set
5 forth below;

6 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
7 the applicable IWC Wage Order for Defendants' failure to compensate
8 Plaintiff and other non-party Aggrieved Employees with at least
9 minimum wages for all hours worked, as set forth below;

10 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
11 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
12 and other non-party Aggrieved Employees with meal periods, as set
13 forth below;

14 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
15 applicable IWC Wage Order for Defendants' failure to authorize and
16 permit Plaintiff and other non-party Aggrieved Employees to take rest
17 periods, as set forth below;

18 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
19 IWC Wage Order for failure to provide accurate and complete wage
20 statements to Plaintiff and other non-party Aggrieved Employees, as set
21 forth below;

22 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
23 IWC Wage Order for failure to maintain payroll records, as set forth
24 below;

25 (h) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment, as set forth below;

27 (i) Violation of Labor Code sections 201 and 202 for failure to pay all
28 earned wages upon termination, as set forth below;

(j) Violation of Labor Code section 246 for failure to properly calculate the sick leave paid to Plaintiff and other non-party Aggrieved Employees, as set forth below; and

(k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

47. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

48. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

49. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

50. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

51. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

6 52. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
8 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
9 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
10 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
11 not recorded.

12 53. First, during the relevant period, Defendants had a company-wide policy and/or
13 practice of improperly rounding employees' clock-in and clock-out times in their timekeeping
14 system to the nearest five (5) minutes. On information and belief, Defendants' rounding
15 policy resulted in the failure to compensate Plaintiff and other non-party Aggrieved
16 Employees fully for all hours worked, causing Plaintiff and other non-party Aggrieved
17 Employees not be paid overtime wages for all of the overtime hours they actually worked.
18 Defendants' policy of rounding is unfair and has, over time, resulted in the underpayment of
19 wages to Plaintiff and other non-party Aggrieved Employees. To the extent Defendants'
20 rounding policy has taken away time worked that was eligible for overtime, Plaintiff and other
21 non-party Aggrieved Employees were denied overtime pay for all hours worked.

22 54. Second, during the relevant period, Defendants had, and continue to have, a
23 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
24 party Aggrieved Employees from recording hours worked that were outside of their scheduled
25 shifts in order to limit the amount of overtime employees could accrue. Because Defendants
26 discouraged overtime accrual by, among other things, requiring employees to obtain pre-
27 approval of overtime hours from Defendants' supervisors, Plaintiff and other non-party
28 Aggrieved Employees were required to complete assigned tasks outside of their scheduled

1 shifts without being compensated for the time they worked. For example, for 30-60 minutes
2 before her shifts and for 30-45 minutes after her shifts, Plaintiff was required to read and
3 respond to text messages and/or e-mails regarding client updates and other work-related
4 matters sent by Defendants' management.

5 55. Third, during the relevant period, Defendants had, and continue to have, a
6 company-wide policy and/or practice of understaffing while assigning heavy workloads,
7 resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees with
8 adequate meal period coverage. As a result of this lack of meal period coverage, Plaintiff and
9 other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal
10 periods during shifts when they were entitled to receive a meal period. For example, Plaintiff
11 was required to continue performing her duties, including attending to clients at the drop-in
12 center, during her meal periods and, as a result, worked through several meal periods during
13 her employment. As a further example, Plaintiff sometimes cut her meal periods short due to
14 understaffing and the resultant lack of coverage. Plaintiff's meal periods were also sometimes
15 interrupted by her managers asking questions about work-related matters.

16 56. Additionally, Defendants, on a company-wide basis, had a practice of failing to
17 schedule and/or failing to adhere to a schedule for meal periods which, in conjunction with the
18 assignment of heavy workloads, further caused Plaintiff and other non-party Aggrieved
19 Employees to not be relieved of their duties for compliant meal periods. Thus, Plaintiff's and
20 other non-party Aggrieved Employees' meal periods were missed or interrupted to complete
21 their assigned workloads. Defendants did not pay Plaintiff and other non-party Aggrieved
22 Employees for the time they continued to perform tasks during meal periods.

23 57. Fourth, on information and belief, because Defendants frowned upon
24 employees accruing meal period penalties, Defendants pressured Plaintiff and other non-party
25 Aggrieved Employees to clock out for meal periods, on threat of discipline, even when they
26 did not receive a compliant meal period, in order to strictly limit meal penalties that
27 Defendants would otherwise owe. For example, Defendants' management instructed Plaintiff
28 that she must input a compliant meal period on days when her meal periods were

1 interrupted/cut short in order for her timecards to be accepted by the timekeeping system.
2 Thus, Defendants did not record all hours worked during meal periods and Plaintiff and other
3 non-party Aggrieved Employees performed work during meal periods for which they were not
4 paid.

5 58. Defendants knew or should have known that, as a result of these company-wide
6 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
7 their assigned duties off-the-clock before and after their shifts and during meal periods, and
8 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
9 and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or
10 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
11 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
12 overtime wages for all of the overtime hours they actually worked.

13 59. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
14 Employees the correct overtime rates for the recorded overtime hours that they generated. In
15 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
16 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
17 However, in violation of the California Labor Code, Defendants failed to incorporate all
18 remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation
19 of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,
20 during times when Plaintiff and other non-party Aggrieved Employees worked overtime and
21 received these other forms of pay, Defendants failed to pay all overtime wages by paying a
22 lower overtime rate than required.

23 60. For example, Defendants paid Plaintiff and other non-party Aggrieved
24 Employees incentive pay and/or nondiscretionary bonuses which were listed on Plaintiff's and
25 other non-party Aggrieved Employees' wage statements as "Covid Stipend." During pay
26 periods that Plaintiff and other non-party Aggrieved Employees were paid overtime wages,
27 Defendants did not incorporate the incentive pay and/or nondiscretionary bonuses into
28 Plaintiff's and other non-party Aggrieved Employees' regular rate of pay and, as a result, paid

1 them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants
2 paid Plaintiff and other non-party Aggrieved Employees 1.5 times their hourly rate of pay
3 instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the
4 overtime rates of pay based on all remuneration paid has resulted in an underpayment of
5 overtime wages to Plaintiff and other non-party Aggrieved Employees on a company-wide
6 basis.

7 61. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
8 the balance of overtime compensation as required by California law, violates the provisions of
9 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
10 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
11 558 and/or 2699(a), (f), and (g).

12 **FAILURE TO PAY MINIMUM WAGES**

13 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

14 62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
15 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
16 to be paid to employees, and the payment of a wage less than the minimum so fixed is
17 unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time
18 during which an employee is subject to the control of an employer, and includes all the time
19 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
20 Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

21 63. As set forth above, Defendants had a company-wide policy and/or practice of
22 rounding Plaintiff's and other non-party Aggrieved Employees' hourly clock-in and clock-out
23 times in their timekeeping system to the nearest five (5) minutes, resulting in the failure to
24 compensate them for all hours worked. Moreover, as stated above, due to Defendants'
25 restrictions on overtime accrual, Defendants systematically failed to pay Plaintiff and other
26 non-party Aggrieved Employees for actual hours worked before and after scheduled shifts,
27 because these hours were not properly recorded. Plaintiff and other non-party Aggrieved
28 Employees were required to perform tasks off-the-clock before and after their shifts, including

1 reading and responding to text messages and/or e-mails from Defendants' management
2 regarding client updates and other work-related matters.

3 64. Further, as also stated above, due to Defendants' policies and/or practices of
4 understaffing while assigning heavy workloads, and failing to schedule and/or failing to
5 adhere to a schedule for meal periods, Plaintiff and other non-party Aggrieved Employees
6 were impeded from taking all uninterrupted meal periods to which they were entitled and were
7 required to work off-the-clock during meal periods. Moreover, as stated, in order to prevent
8 employees from accruing meal period penalties, upon information and belief, Defendants'
9 management pressured employees to clock out for meal periods even when meal periods were
10 missed, short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff and
11 other non-party Aggrieved Employees for actual hours worked during unpaid meal periods
12 because these hours were not always correctly recorded.

13 65. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
14 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
15 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
16 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
17 1194, 1197, and 1198.

18 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
20 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

24 67. At all relevant times herein set forth, the applicable IWC Wage Order and
25 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
26 other non-party Aggrieved Employees' employment by Defendants.

27 68. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is
3 not more than six (6) hours, the meal period may be waived by mutual consent of both the
4 employer and the employee. Under California law, first meal periods must start after no more
5 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 69. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 70. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
10 1198, and the applicable IWC Wage Order also require employers to provide a second meal
11 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
12 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
13 the total hours worked is no more than twelve (12) hours, the second meal period may be
14 waived by mutual consent of the employer and the employee only if the first meal period was
15 not waived.

16 71. Under California law, an employer cannot evade meal period requirements via
17 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
18 *Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be
19 provided with the opportunity to eat his or her meal while performing the duties required and
20 any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long.
21 *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141
22 (2019).

23 72. First, during the relevant time period, Defendants maintained a company-wide,
24 unlawful written meal period policy insofar as it fails to state the timing of when meal periods
25 must occur. Under California law, first meal periods must start after no more than five (5)
26 hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, Defendants' written meal period
27 policy only states, in part: "Each employee working at least five (5) consecutive hours shall be
28 entitled to an unpaid meal period of thirty (30) minutes minimum." Defendants' written

1 policy fails to state the correct timing of when the first meal period must take place (i.e.,
2 within the first five (5) hours of work) under California law and is therefore facially invalid.
3 Furthermore, Defendants' non-compliant written meal period policy also fails to mention that
4 employees are entitled to a second 30-minute meal period when working shifts in excess of
5 ten (10) hours.

6 73. Second, as stated, Defendants had, and continue to have, company-wide
7 policies and/or practices of understaffing their locations, which, combined with heavy
8 workloads and a failure to schedule meal periods and/or to adhere to a schedule for meal
9 periods, has resulted in a lack of meal period coverage and prevented Plaintiff and other non-
10 party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they
11 were entitled. As result, Plaintiff and other non-party Aggrieved Employees had to work
12 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
13 extended periods of time before taking meal periods. For example, Plaintiff's meal periods
14 were regularly missed, late, and/or cut short because she was required to continue performing
15 her duties during her meal periods due to understaffing and the resultant lack of coverage. As
16 a further example, Plaintiff's meal periods were also sometimes interrupted by her managers
17 asking questions about work-related matters.

18 74. Furthermore, because Defendants frowned upon employees accruing meal
19 period penalties, Defendants' management pressured Plaintiff and other non-party Aggrieved
20 Employees to clock out for meal periods to reflect compliant meal periods, upon threat of
21 discipline, regardless of whether they had received a compliant meal period or not, in order to
22 strictly limit meal penalties that would need to be paid by Defendants.

23 75. Third, Defendants did not schedule second meal periods and, as stated, had no
24 policy for permitting Plaintiff and other non-party Aggrieved Employees to take second 30-
25 minute meal periods on days that they worked in excess of ten (10) hours in one day. Plaintiff
26 and other non-party Aggrieved Employees did not sign valid meal period waivers on days that
27 they were entitled to meal periods and were not relieved of all duties.

28 76. Fourth, Defendants had a company-wide policy of requiring all employees to

1 sign blanket meal period waivers at or near their time of hire. Defendants took the position
2 that non-exempt, hourly paid employees had waived their rights to first and/or second meal
3 periods for the entirety of their employment and, on that basis, did not provide them with all
4 meal periods to which they were entitled. Furthermore, Defendants' meal period waiver form
5 requires employees to provide written notice should they wish to revoke the waiver.
6 Defendants' presumption that meal periods would not be provided for shifts in excess of five
7 (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than
8 twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and
9 imposition on employees to revoke the waivers in writing, discouraged and impeded Plaintiff
10 and other non-party Aggrieved Employees from taking all meal periods to which they were
11 entitled.

12 77. Furthermore, an employer's obligation to provide a meal period is only
13 "triggered" when the employer "employs an employee for a work period of more than five
14 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
15 anyone to work for a full five hours, its meal break obligation is triggered.").

16 [A]fter the meal break obligation is triggered . . . an employer is put to a
17 choice: it must (1) afford an off-duty meal period; (2) consent to a
18 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
19 obtain written agreement to an on-duty meal period if circumstances
20 permit. Failure to do one of these will render the employer liable for
21 premium pay.

22 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
23 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
24 simultaneously (as opposed to on a specific work day) renders them invalid and
25 unenforceable, because Defendants' obligation to provide Plaintiff and other non-party
26 Aggrieved Employees with meal periods did not arise until they had employed them for a full
27 five (5) hours.

28 78. At all times mentioned herein, Defendants knew or should have known that, as
a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
from being relieved of all duties and required to perform some of their assigned duties during

1 meal periods. Defendants further knew or should have known that they did not pay Plaintiff
2 and other non-party Aggrieved Employees meal period premiums when meal periods were
3 late, interrupted, shortened, and/or missed. As set forth above, Defendants have a company-
4 wide policy and/or practice of rounding employee clock-in and clock-out times in their
5 timekeeping system, which prevented Plaintiff and other non-party Aggrieved Employees
6 from receiving all meal period premiums when they took late and/or shortened meal periods.
7 As stated, Defendants' rounding policy rounded employees' clock-in and clock-out times in
8 its timekeeping system to the nearest five (5) minutes. To the extent that Defendants'
9 timekeeping system reported that Plaintiff and other non-party Aggrieved Employees were
10 provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken
11 after the fifth hour of work or were less than 30 minutes, Plaintiff and other non-party
12 Aggrieved Employees were entitled to a meal period premium. Thus, Plaintiff and other non-
13 party Aggrieved Employees did not receive meal period premiums for these improperly
14 rounded meal periods.

15 79. Further, Defendants have implemented a company-wide written policy that
16 treats noncompliant meal periods as "on duty" meal periods instead of paying meal period
17 premiums. For example, Defendants' "Meal and Rest Breaks" policy states, in relevant part:
18 "[w]hen an employee is not completely relieved of all duties during their meal period and/or is
19 not free to leave the premises, the employee will have an on-duty meal period and shall be
20 paid for the meal period."

21 80. However, under California law, "on-duty" meal periods are a limited
22 alternative to the requirement to provide off-duty meal periods and can only be utilized under
23 certain circumstances. IWC Wage Order 4-2001, subdivision 11(A) provides that an "on
24 duty" meal period "shall be permitted only when the nature of the work prevents an employee
25 from being relieved of all duty and when by written agreement between the parties an on-the-
26 job paid meal period is agreed to. The written agreement shall state that the employee may, in
27 writing, revoke the agreement at any time."

28 81. The work of Defendants' employees is not the kind that could be said to meet

1 the “nature of the work” exception. Plaintiff and other non-party Aggrieved Employees were
2 responsible for assisting clients with life skills, doing case management, and distributing food
3 pantry items. None of these tasks is akin to the kind that the California Division of Labor
4 Standards Enforcement (“DLSE”) has found warrant an “on-duty” meal period, such as
5 transporting hazardous materials via vehicles that must be monitored at all times pursuant to
6 federal regulation. Furthermore, Defendants did not provide Plaintiff and other non-party
7 Aggrieved Employees with a written “on duty” meal period agreement that stated that the
8 employee could revoke the agreement in writing at any time. Therefore, Defendants’ use of
9 an “on duty” meal period is improper and unlawful. Because of Defendants’ company-wide
10 written “on-duty” meal period policy, Plaintiff and other non-party Aggrieved Employees did
11 not receive all required off-duty meal periods and did not receive all premium pay for missed,
12 late, or interrupted meal periods.

13 82. Furthermore, Defendants engaged in a company-wide practice and/or policy of
14 not paying all meal period premiums owed when compliant meal periods are not provided.
15 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
16 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
17 to the extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees
18 premium pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff
19 and other non-party Aggrieved Employees the correct rate of pay for premiums because
20 Defendant systematically failed to include all forms of compensation such as incentive pay,
21 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

22 83. Defendants’ conduct violates the applicable IWC Wage Order, and California
23 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
24 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
25 558 and/or 2699(a), (f), and (g).

26 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

27 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

28 84. At all relevant times herein set forth, the applicable IWC Wage Order and

1 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
2 non-party Aggrieved Employees' employment by Defendants.

3 85. At all relevant times, the applicable IWC Wage Order provides that "[e]very
4 employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period" and that the "rest period time shall be
6 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
7 hours or major fraction thereof" unless the total daily work time is less than three and one-half
8 (3 ½) hours.

9 86. At all relevant times, California Labor Code section 226.7 provides that no
10 employer shall require an employee to work during any rest period mandated by an applicable
11 order of the California IWC. To comply with its obligation to authorize and permit rest
12 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
13 employer must "relinquish any control over how employees spend their break time, and
14 relieve their employees of all duties—including the obligation that an employee remain on
15 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
16 *Inc.*, 2 Cal. 5th 257, 273 (2016).

17 87. Pursuant to the applicable IWC Wage Order and California Labor Code section
18 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
19 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
20 required rest period was not authorized and permitted.

21 88. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
23 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
24 Defendants' company-wide practices, including understaffing and assigning heavy workloads,
25 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty
26 to take rest periods. Additionally, Defendants also failed to schedule rest periods, which,
27 coupled with Defendants' failure to provide adequate rest period coverage, further led to
28 Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take

1 rest periods.

2 89. Furthermore, on information and belief, Defendants maintained and
3 implemented a company-wide on-premises rest period policy, which effectively required that
4 Plaintiff and other non-party Aggrieved Employees remain on Defendants' premises during
5 their rest periods. Because Plaintiff and other non-party Aggrieved Employees were restricted
6 from leaving Defendants' premises during rest periods, they were denied the ability to use
7 their rest periods freely for their own purposes, such as running personal errands. Thus,
8 Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
9 Employees during rest periods.

10 90. As a result of Defendants' practices and policies, Plaintiff and other non-party
11 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
12 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
13 were entitled. For example, Plaintiff had to forego her rest periods because of the heavy
14 workload.

15 91. Defendants have also engaged in a systematic, company-wide practice and/or
16 policy of not paying rest period premiums owed when rest periods are not authorized and
17 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
18 Employees have not received premium pay for all missed rest periods. Alternatively, to the
19 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
20 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
21 other non-party Aggrieved Employees at the correct rate of pay for premiums because
22 Defendants failed to include all forms of compensation, such as incentive pay,
23 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

24 92. Accordingly, Defendants failed to authorize and permit all compliant rest
25 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
26 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
27 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
28 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

93. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

94. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

95. Because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

96. Additionally, because Defendants did not calculate Plaintiff's and other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime

1 wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the
2 correct amount of gross wages in compliance with section 226(a)(1) and did not list the
3 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
4 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
5 of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation
6 of section 226(a)(9).

7 97. The wage statement deficiencies also include, among other things, failing to list
8 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
9 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
10 for which aggrieved employees were paid; failing to list the name of the employee and only
11 the last four digits of his or her social security number or an employee identification number
12 other than a social security number; failing to list the name and address of the legal entity that
13 is the employer; and/or failing to state all hours worked as a result of not recording or stating
14 the hours worked off-the-clock.

15 98. California Labor Code section 1174(d) provides that “[e]very person employing
16 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
17 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
18 plants or establishments at which employees are employed, payroll records showing the hours
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
20 applicable piece rate paid to, employees employed at the respective plants or
21 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
22 civil penalty if they fail to maintain accurate and complete records as required by section
23 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
24 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
25 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
26 as a result of failing to record the off-the-clock hours that they worked and improperly
27 rounding Plaintiff’s and other non-party Aggrieved Employees’ total hours worked.

28 99. California Labor Code section 1198 provides that the maximum hours of work

1 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
2 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
3 employment of any employees for longer hours than those fixed by the order or under
4 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
5 Wage Order, employers are required to keep accurate time records showing when the
6 employee begins and ends each work period and meal period. During the relevant time
7 period, Defendants engaged in company-wide practices and/or policies of failing to record
8 actual hours worked, and thereby failed to keep accurate records of work period and meal
9 period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation
10 of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and other
11 non-party Aggrieved Employees with second 30-minute meal periods to which they were
12 entitled, Defendants kept no records of meal start and end times for second meal periods.

13 100. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
14 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
15 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

16 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

17 **VIOLATION OF LABOR CODE SECTION 204**

18 101. At all relevant times herein set forth, California Labor Code section 204
19 requires that all wages earned by any person in any employment between the 1st and the 15th
20 days, inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the 16th and the 26th day of the month during which
22 the labor was performed. Labor Code section 204 further provides that all wages earned by
23 any person in any employment between the 16th and the last day, inclusive, of any calendar
24 month, other than those wages due upon termination of an employee, are due and payable
25 between the 1st and the 10th day of the following month.

26 102. At all relevant times herein, California Labor Code section 204 also requires
27 that all wages earned for labor in excess of the normal work period shall be paid no later than
28 the payday for the next regular payroll period. Alternatively, at all relevant times herein,

1 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
2 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
3 more than seven (7) calendar days following the close of the payroll period.

4 103. During the relevant time period, Defendants willfully failed to pay Plaintiff and
5 other non-party Aggrieved Employees all wages due to them within any time period specified
6 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
7 wages, meal and rest period premiums, and/or sick leave pay.

8 104. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
9 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

10 **FAILURE TO PAY WAGES UPON TERMINATION**

11 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

12 105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
13 that if an employer discharges an employee, the wages earned and unpaid at the time of
14 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
15 her employment, his or her wages shall become due and payable not later than seventy-two
16 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
17 his or her intention to quit, in which case the employee is entitled to his or her wages at the
18 time of quitting.

19 106. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
20 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
21 above, including, but not limited to, overtime wages, minimum wages, meal and rest
22 premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72)
23 hours of their leaving Defendants' employ.

24 107. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
25 who are no longer employed by Defendants their wages earned and unpaid at the time of
26 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
27 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
28 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or

2699(a), (f), and (g).

FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY

VIOLATION OF LABOR CODE SECTION 246

108. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

109. During the relevant time period, Defendants did not pay Plaintiff and other non-party Aggrieved Employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Plaintiff and other non-party Aggrieved Employees took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants paid Plaintiff and other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

110. For example, during the pay period ending September 23, 2022, Plaintiff took

1 5.50 hours of sick leave and earned \$200.00 in incentive pay or nondiscretionary bonuses
2 during the same pay period. However, Defendants paid Plaintiff's sick leave rate based on her
3 hourly rate of \$24.10 instead of her regular rate of pay.

4 111. Defendants' failure to properly calculate the sick leave rates of pay based on all
5 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other
6 non-party Aggrieved Employees on a company-wide basis in violation of California Labor
7 Code section 246(l).

8 112. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
9 recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

10 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

11 **VIOLATION OF LABOR CODE SECTION 2802**

12 113. At all times herein set forth, California Labor Code section 2802 provides that
13 an employer must reimburse employees for all necessary expenditures and losses incurred by
14 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
15 to prevent employers from passing off their cost of doing business and operating expenses on
16 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
17 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen
18 tools or equipment are required by the employer or are necessary to the performance of a job,
19 such tools and equipment shall be provided and maintained by the employer, except that an
20 employee whose wages are at least two (2) times the minimum wage may provide and
21 maintain hand tools and equipment customarily required by the particular trade or craft."

22 114. During the relevant time period, Defendants had a company-wide policy of
23 requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
24 mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out
25 their job duties, but failed to reimburse them for all costs of their work-related mobile device
26 expenses. Plaintiff and other non-party Aggrieved Employees were required to use their
27 personal mobile devices for work-related tasks, including downloading several applications
28 such as Google Voice, which Plaintiff used to communicate with clients; Zoom, which

1 Plaintiff used to communicate with management, coworkers, clients, and stakeholders; Titan,
2 which Plaintiff used to gain access to the building where she worked; PayCom, which Plaintiff
3 used to clock in and out for her shifts and access documents pertaining to her employment;
4 and Office 365, which Plaintiff used for her daily job duties involving e-mail and case
5 management. In addition, Plaintiff used her personal mobile device to respond to calls and
6 text messages from Defendants' management to discuss work-related matters. Although
7 Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their
8 personal mobile devices and/or mobile data to carry out their work-related responsibilities,
9 Defendants failed to reimburse them entirely for these costs.

10 115. Defendants could have provided Plaintiff and other non-party Aggrieved
11 Employees with the actual equipment for use on the job, such as company mobile devices.
12 Or, Defendants could have reimbursed employees for their mobile device usage. Instead,
13 Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved
14 Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
15 wage.

16 116. Defendants' company-wide policy and/or practice of passing on their operating
17 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
18 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
19 other non-party Aggrieved Employees for necessary business-related expenses and costs.

20 117. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
21 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **REQUEST FOR JURY TRIAL**

23 Plaintiff requests a trial by jury.

24 **PRAYER FOR RELIEF**

25 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
26 judgment against Defendants, jointly and severally, as follows:

27 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
28 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different

amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the “regular rate” of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 246 (by failing to properly calculate sick leave pay); and 2802 (by failing to reimburse business expenses);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys’ fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

5. For pre-judgment and post-judgment interest as provided by law; and

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1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

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4 Dated: May 19, 2023

Respectfully submitted,

Capstone Law APC

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6
7 By: 

Orlando Villalba

Helga Hakimi

Roxanna Tabatabaeepour

Ryan Tish

Alexander Wallin

Attorneys for Plaintiff Nichole Velazquez-
Morrow

EXHIBIT “1”

SAIRAH BUDHWANI
310.929.5455 Direct
Sairah.Budhwani@capstonelawyers.com

March 14, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Nichole Velazquez-Morrow v. Orangewood Foundation*

Dear PAGA Administrator:

This office represents Nichole Velazquez-Morrow in connection with her claims under the California Labor Code. Ms. Velazquez-Morrow was an employee of ORANGEWOOD FOUNDATION (“ORANGEWOOD”).

The employer may be contacted directly at the address below:

ORANGEWOOD FOUNDATION
1575 E 17TH STREET
SANTA ANA, CA 92705

Ms. Velazquez-Morrow intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Velazquez-Morrow seeks relief on behalf of herself, the State of California, and other persons who are or were employed by ORANGEWOOD as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ORANGEWOOD employed Ms. Velazquez-Morrow as an hourly paid, non-exempt employee from approximately June 2022 to September 2022. Ms. Velazquez-Morrow worked for ORANGEWOOD as a Youth Support Specialist and, subsequently, as a Case Manager at its location in Santa Ana, California. During her employment, Ms. Velazquez-Morrow typically worked eight (8) hours or more per day and five (5) days per week. At the time her employment ended, Ms. Velazquez-Morrow was compensated approximately \$24.10 per hour. Ms. Velazquez-Morrow’s primary job duties included, without limitation, assisting youth clients with housing, job applications, and resumés; distributing hot meals and food pantry and hygiene items; assisting drop-in youth with urgent matters; and case management.

ORANGEWOOD committed one or more of the following Labor Code violations against Ms. Velazquez-Morrow, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

ORANGEWOOD’s Company-Wide and Uniform Payroll and HR Practices

ORANGEWOOD FOUNDATION is a California corporation that serves current and former foster youth in Orange County by providing health, wellness, housing, education, life skills, and employment assistance. Upon information and belief, ORANGEWOOD maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Santa Ana, California for all non-exempt, hourly paid employees working for ORANGEWOOD in California, including Ms. Velazquez-Morrow and other aggrieved employees. At all relevant times, ORANGEWOOD issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Velazquez-Morrow and other aggrieved employees, regardless of their location or position.

Upon information and belief, ORANGEWOOD maintains a centralized Payroll department at its corporate headquarters in Santa Ana, California, which processes payroll for all non-exempt, hourly paid employees working for ORANGEWOOD in California, including Ms. Velazquez-Morrow and other aggrieved employees. Further, ORANGEWOOD issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Velazquez-Morrow and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, ORANGEWOOD utilized the same methods and formulas when calculating wages due to Ms. Velazquez-Morrow and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

ORANGEWOOD willfully failed to pay all overtime wages owed to Ms. Velazquez-Morrow and other aggrieved employees. During the relevant time period, Ms. Velazquez-Morrow and other

¹ These facts, theories, and claims are based on Ms. Velazquez-Morrow’s experience and counsel’s review of those records currently available relating to Ms. Velazquez-Morrow’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Velazquez-Morrow reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, ORANGEWOOD had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest five (5) minutes. On information and belief, ORANGEWOOD's rounding policy resulted in the failure to compensate Ms. Velazquez-Morrow and other aggrieved employees fully for all hours worked, causing Ms. Velazquez-Morrow and other aggrieved employees not be paid overtime wages for all of the overtime hours they actually worked. ORANGEWOOD's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Ms. Velazquez-Morrow and other aggrieved employees. To the extent ORANGEWOOD's rounding policy has taken away time worked that was eligible for overtime, Ms. Velazquez-Morrow and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant period, ORANGEWOOD had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Velazquez-Morrow and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Because ORANGEWOOD discouraged overtime accrual by, among other things, requiring employees to obtain pre-approval of overtime hours from ORANGEWOOD's supervisors, Ms. Velazquez-Morrow and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked. For example, for 30-60 minutes before her shifts and for 30-45 minutes after her shifts, Ms. Velazquez-Morrow was required to read and respond to text messages and/or e-mails regarding client updates and other work-related matters sent by ORANGEWOOD's management.

Third, during the relevant period, ORANGEWOOD had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, resulting in a failure to provide Ms. Velazquez-Morrow and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Velazquez-Morrow and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Velazquez-Morrow was required to continue performing her duties, including attending to clients at the drop-in center, during her meal periods and, as a result, worked through several meal periods during her employment. As a further example, Ms. Velazquez-Morrow sometimes cut her meal periods short due to understaffing and the resultant lack of coverage. Ms. Velazquez-Morrow's meal periods were also sometimes interrupted by her managers asking questions about work-related matters.

Additionally, ORANGEWOOD, on a company-wide basis, had a practice of failing to schedule and/or failing to adhere to a schedule for meal periods which, in conjunction with the assignment of heavy workloads, further caused Ms. Velazquez-Morrow and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Ms. Velazquez-Morrow and other aggrieved employees' meal periods were missed or interrupted to complete their assigned workloads. ORANGEWOOD did not pay Ms. Velazquez-Morrow and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, on information and belief, because ORANGEWOOD frowned upon employees accruing meal period penalties, ORANGEWOOD pressured Ms. Velazquez-Morrow and other aggrieved employees to clock out for meal periods, on threat of discipline, even when they did not receive a

compliant meal period, in order to strictly limit meal penalties that ORANGEWOOD would otherwise owe. For example, ORANGEWOOD's management instructed Ms. Velazquez-Morrow that she must input a compliant meal period on days when her meal periods were interrupted/cut short in order for her timecards to be accepted by the timekeeping system. Thus, ORANGEWOOD did not record all hours worked during meal periods and Ms. Velazquez-Morrow and other aggrieved employees performed work during meal periods for which they were not paid.

ORANGEWOOD knew or should have known that as a result of these company-wide practices and/or policies, Ms. Velazquez-Morrow and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Velazquez-Morrow and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Velazquez-Morrow and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, ORANGEWOOD did not pay Ms. Velazquez-Morrow and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, ORANGEWOOD paid Ms. Velazquez-Morrow and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ORANGEWOOD failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Velazquez-Morrow and other aggrieved employees worked overtime and received these other forms of pay, ORANGEWOOD failed to pay all overtime wages by paying a lower overtime rate than required.

For example, ORANGEWOOD paid Ms. Velazquez-Morrow and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Ms. Velazquez-Morrow's and other aggrieved employees' wage statements as "Covid Stipend." During pay periods that Ms. Velazquez-Morrow and other aggrieved employees were paid overtime wages, ORANGEWOOD did not incorporate the incentive pay and/or nondiscretionary bonuses into Ms. Velazquez-Morrow's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, ORANGEWOOD paid Ms. Velazquez-Morrow and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. ORANGEWOOD's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Velazquez-Morrow and other aggrieved employees on a company-wide basis.

ORANGEWOOD's failure to pay Ms. Velazquez-Morrow and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 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.” Cal. Code Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

As set forth above, ORANGEWOOD had a company-wide policy and/or practice of rounding Ms. Velazquez-Morrow’s and other aggrieved employees’ hourly clock-in and clock-out times in its timekeeping system to the nearest five (5) minutes, resulting in the failure to compensate them for all hours worked. Moreover, as stated above, due to ORANGEWOOD’s restrictions on overtime accrual, ORANGEWOOD systematically failed to pay Ms. Velazquez-Morrow and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not properly recorded. Ms. Velazquez-Morrow and other aggrieved employees were required to perform tasks off-the-clock before and after their shifts, including reading and responding to text messages and/or e-mails from ORANGEWOOD’s management regarding client updates and other work-related matters.

Further, as also stated above, due to ORANGEWOOD’s policies and/or practices of understaffing while assigning heavy workloads, and failing to schedule and/or failing to adhere to a schedule for meal periods, Ms. Velazquez-Morrow and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, ORANGEWOOD’s management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted. Thus, ORANGEWOOD systematically failed to pay Ms. Velazquez-Morrow and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, ORANGEWOOD did not pay at least minimum wages for all hours worked by Ms. Velazquez-Morrow and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, ORANGEWOOD did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, ORANGEWOOD regularly failed to pay at least minimum wages to Ms. Velazquez-Morrow and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at

the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

First, during the relevant time period, ORANGEWOOD maintained a company-wide, unlawful written meal period policy insofar as it fails to state the timing of when meal periods must occur. Under California law, first meal periods must start after no more than five hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, ORANGEWOOD's written meal period policy only states, in part: "Each employee working at least five (5) consecutive hours shall be entitled to an unpaid meal period of thirty (30) minutes minimum." ORANGEWOOD's written policy fails to state the correct timing of when the first meal period must take place (i.e., within the first five (5) hours of work) under California law and is therefore facially invalid. Furthermore, ORANGEWOOD's non-compliant written meal period policy also fails to mention that employees are entitled to a second 30-minute meal period when working shifts in excess of ten (10) hours.

Second, as stated, ORANGEWOOD had, and continues to have, company-wide policies and/or practices of understaffing its locations, which, combined with heavy workloads and a failure to schedule meal periods and/or to adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented Ms. Velazquez-Morrow and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As result, Ms. Velazquez-Morrow and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Ms. Velazquez-Morrow's meal periods were regularly missed, late, and/or cut short because she was required to continue performing her duties during her meal periods due to understaffing and the resultant lack of coverage. As a further example, Ms. Velazquez-Morrow's meal periods were also sometimes interrupted by her managers asking questions about work-related matters.

Furthermore, because ORANGEWOOD frowned upon employees accruing meal period penalties, ORANGEWOOD's management pressured Ms. Velazquez-Morrow and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless

of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by ORANGEWOOD.

Third, ORANGEWOOD did not schedule second meal periods and, as stated, had no policy for permitting Ms. Velazquez-Morrow and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Velazquez-Morrow and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Fourth, ORANGEWOOD had a company-wide policy of requiring all employees to sign blanket meal period waivers at or near their time of hire. ORANGEWOOD took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, ORANGEWOOD's meal period waiver form requires employees to provide written notice should they wish to revoke the waiver. ORANGEWOOD's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Velazquez-Morrow and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That ORANGEWOOD required Ms. Velazquez-Morrow and other aggrieved employees to sign meal period waivers simultaneously (as opposed to on a specific work day) renders them invalid and unenforceable, because ORANGEWOOD's obligation to provide Ms. Velazquez-Morrow and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, ORANGEWOOD knew or should have known that, as a result of these policies, Ms. Velazquez-Morrow and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. ORANGEWOOD further knew or should have known that it did not pay Ms. Velazquez-Morrow and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed. As set forth above, ORANGEWOOD has a company-wide policy and/or practice of rounding employee clock-in and clock-out times in its timekeeping system, which prevented Ms. Velazquez-Morrow and other aggrieved employees from receiving all meal period premiums when they took late and/or shortened meal periods. As stated, ORANGEWOOD's rounding policy rounded employees' clock-in and clock-out times in its timekeeping system to the nearest five (5) minutes. To the extent that ORANGEWOOD's timekeeping system reported that

Ms. Velazquez-Morrow and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes. Ms. Velazquez-Morrow and other aggrieved employees were entitled to a meal period penalty. Thus, Ms. Velazquez-Morrow and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

Further, ORANGEWOOD has implemented a company-wide written policy that treats noncompliant meal periods as “on duty” meal periods instead of paying meal period premiums. For example, ORANGEWOOD’s “Meal and Rest Breaks” policy states, in relevant part: “[w]hen an employee is not completely relieved of all duties during their meal period and/or is not free to leave the premises, the employee will have an on-duty meal period and shall be paid for the meal period.”

However, under California law, “on-duty” meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. IWC Wage Order 4-2001, subdivision 11(A) provides that an “on duty” meal period “shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

The work of ORANGEWOOD’s employees is not the kind that could be said to meet the “nature of the work” exception. Ms. Velazquez-Morrow and other employees were responsible for assisting clients with life skills, doing case management, and distributing food pantry items. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement (“DLSE”) has found warrant an “on-duty” meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Furthermore, ORANGEWOOD did not provide Ms. Velazquez-Morrow and other aggrieved employees with a written “on duty” meal period agreement that stated that the employee could revoke the agreement in writing at any time. Therefore, ORANGEWOOD’s use of an “on duty” meal period is improper and unlawful. Because of ORANGEWOOD’s company-wide written “on-duty” meal period policy, Ms. Velazquez-Morrow and other aggrieved employees did not receive all required off-duty meal periods and did not receive all premium pay for missed, late, or interrupted meal periods.

Moreover, ORANGEWOOD engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Velazquez-Morrow and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that ORANGEWOOD did pay Ms. Velazquez-Morrow and other aggrieved employees premium pay for missed, late, and interrupted meal periods, ORANGEWOOD did not pay Ms. Velazquez-Morrow and other aggrieved employees at the correct rate of pay for premiums because ORANGEWOOD systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ORANGEWOOD failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, ORANGEWOOD regularly failed to authorize and permit Ms. Velazquez-Morrow and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ORANGEWOOD's company-wide practices, including understaffing and assigning heavy workloads, prevented Ms. Velazquez-Morrow and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, ORANGEWOOD failed to schedule rest periods, which, coupled with ORANGEWOOD's failure to provide adequate rest period coverage, further led to Ms. Velazquez-Morrow and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, ORANGEWOOD maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Velazquez-Morrow and other aggrieved employees remain on the premises during their rest periods. Because Ms. Velazquez-Morrow and other aggrieved employees were restricted from leaving ORANGEWOOD's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, ORANGEWOOD effectively maintained control over Ms. Velazquez-Morrow and other aggrieved employees during rest periods.

As a result of ORANGEWOOD's practices and policies, Ms. Velazquez-Morrow and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Velazquez-Morrow had to forego her rest periods because of the heavy workload.

ORANGEWOOD has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Velazquez-Morrow and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ORANGEWOOD did pay Ms. Velazquez-Morrow and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ORANGEWOOD did not pay Ms. Velazquez-Morrow and other aggrieved employees at the correct rate of pay for premiums because ORANGEWOOD failed to include all

forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ORANGEWOOD failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ORANGEWOOD has not provided Ms. Velazquez-Morrow and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ORANGEWOOD has knowingly and intentionally provided Ms. Velazquez-Morrow and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ORANGEWOOD issued uniform wage statements to Ms. Velazquez-Morrow and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, ORANGEWOOD violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because ORANGEWOOD did not record the time Ms. Velazquez-Morrow and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), ORANGEWOOD did not list the correct amount of gross wages and net wages earned by Ms. Velazquez-Morrow and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, ORANGEWOOD failed to accurately list the total number of hours worked by Ms. Velazquez-Morrow and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because ORANGEWOOD did not calculate Ms. Velazquez-Morrow's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, ORANGEWOOD did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). ORANGEWOOD also failed to correctly list all applicable hourly

rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), ORANGEWOOD willfully failed to maintain accurate payroll records for Ms. Velazquez-Morrow and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Ms. Velazquez-Morrow’s and other aggrieved employees’ total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, ORANGEWOOD failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Velazquez-Morrow and other aggrieved employees, in violation of section 1198. Furthermore, in light of ORANGEWOOD’s failure to provide Ms. Velazquez-Morrow and other aggrieved employees with second 30-minute meal periods to which they were entitled, ORANGEWOOD kept no records of meal start and end times for second meal periods.

Because ORANGEWOOD failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Velazquez-Morrow and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Velazquez-Morrow and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, ORANGEWOOD failed to pay Ms. Velazquez-Morrow and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

ORANGEWOOD willfully failed to pay Ms. Velazquez-Morrow and other aggrieved employees who are no longer employed by ORANGEWOOD all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving ORANGEWOOD's employ.

Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the

employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, ORANGEWOOD did not pay Ms. Velazquez-Morrow and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, ORANGEWOOD paid Ms. Velazquez-Morrow and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ORANGEWOOD failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Ms. Velazquez-Morrow and other aggrieved employees took sick leave and received these other forms of pay, ORANGEWOOD failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, ORANGEWOOD paid Ms. Velazquez-Morrow and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

For example, during the pay period ending September 23, 2022, Ms. Velazquez-Morrow took 5.50 hours of sick leave and earned \$200.00 in incentive pay or nondiscretionary bonuses during the same pay period. However, ORANGEWOOD paid Ms. Velazquez-Morrow's sick leave rate based on her hourly rate of \$24.10 instead of her regular rate of pay.

ORANGEWOOD's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Velazquez-Morrow and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l). Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen 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 the 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."

During the relevant time period, ORANGEWOOD, on a company-wide basis, required Ms. Velazquez-Morrow and other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for all costs of their work-related mobile device expenses. Ms. Velazquez-Morrow and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including downloading several applications such as Google Chat, which she used to

communicate with management and coworkers; Titan, which she used to gain access to the building where she worked; PayCom, which she used to clock in and out for her shifts and access documents pertaining to her employment; and Office 365, which she used for her daily job duties involving e-mail and case management. In addition, Ms. Velazquez-Morrow used her personal mobile device to respond to calls and text messages from ORANGEWOOD's management to discuss work-related matters. Although ORANGEWOOD required Ms. Velazquez-Morrow and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, ORANGEWOOD failed to reimburse them entirely for these costs.

ORANGEWOOD could have provided Ms. Velazquez-Morrow and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or ORANGEWOOD could have reimbursed employees for their mobile device usage. Instead, ORANGEWOOD passed these operating costs off onto Ms. Velazquez-Morrow and other aggrieved employees. At all relevant times, Ms. Velazquez-Morrow did not earn at least two (2) times the minimum wage.

Thus, ORANGEWOOD had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Velazquez-Morrow and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." ORANGEWOOD, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Velazquez-Morrow's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Velazquez-Morrow seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558, Ms. Velazquez-Morrow, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against ORANGEWOOD for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Velazquez-Morrow seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Velazquez-Morrow's reasonable attempt to settle her dispute with ORANGEWOOD prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform ORANGEWOOD of Ms. Velazquez-Morrow's aforementioned grievances and the proposed remedies as detailed below, while affording ORANGEWOOD a reasonable opportunity to satisfy Ms. Velazquez-Morrow's demands.

Demand is hereby made that ORANGEWOOD shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. ORANGEWOOD shall pay Ms. Velazquez-Morrow and all other aggrieved employees employed by ORANGEWOOD at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. ORANGEWOOD shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. ORANGEWOOD shall conduct a survey or interview all current and former aggrieved employees in California who worked for ORANGEWOOD in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device usage or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. ORANGEWOOD shall pay Ms. Velazquez-Morrow and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. ORANGEWOOD also shall pay Ms. Velazquez-Morrow and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. ORANGEWOOD shall reimburse Ms. Velazquez-Morrow and all aggrieved employees who were required to pay for any business expenses incurred for ORANGEWOOD's benefit, including, but not limited to, costs of mobile device usage, as required by Labor Code section 2802.
6. ORANGEWOOD shall pay accrued legal interest to Ms. Velazquez-Morrow and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. ORANGEWOOD shall provide Ms. Velazquez-Morrow and all aggrieved employees employed by ORANGEWOOD at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

8. ORANGEWOOD shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and paid sick leave based on all remuneration paid, pursuant to Labor Code sections 2267, 510, and 246(l).
9. ORANGEWOOD shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. ORANGEWOOD shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Sairah Budhwani

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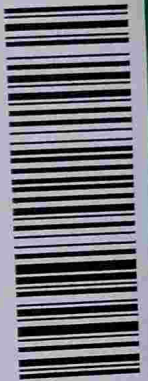
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