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13 As an individual and on behalf of all others similarly situated

Assigned for all purposes:

Judge Lon F. Hurwitz

Dept. CX103

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF ORANGE**

16 CYNTHIA MACIAS, as an individual on
17 behalf of herself and on behalf of all others
18 similarly situated,

19 Plaintiff,

20 v.

21 1736 FAMILY CRISIS CENTER, a
22 California Nonprofit Corporation; and
23 DOES 1-100, inclusive,

24 Defendants.

Case No.: 30-2023-01311143-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition and**
9. **Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1
2
3 Plaintiff, CYNTHIA MACIAS (“PLAINTIFF”), an individual on behalf of PLAINTIFF and
4 all other similarly situated Class Members (as defined below), and Aggrieved Employees (defined
5 hereby files this Complaint against Defendants 1736 FAMILY CRISIS CENTER, a California
6 Nonprofit Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
7 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

8 **JURISDICTION AND VENUE**

9 1. This court possesses original subject matter jurisdiction over this matter. Venue is
10 proper in the County of Orange pursuant to California Code of Civil Procedure section 395.5
11 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
12 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
13 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
14 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
15 where the defendants committed Labor Code violations against some of its employees).

16 **THE PARTIES**

17 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
18 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
19 in the State of California as a non-exempt employee from, including but not limited to, in or around
20 April 2019 through on or around July 8, 2022.

21 3. PLAINTIFF worked for DEFENDANTS in various positions including but not
22 limited to, as a case manager, healthcare navigator, lead case manager and/or similar title(s). During
23 the relevant period, PLAINTIFF was regularly assigned by DEFENDANTS to work out of
24 DEFENDANTS’ locations/facilities in California, including but not limited to, DEFENDANTS’
25 offices, locations, co-locations, and/or facilities located in Orange County, California. PLAINTIFF
26 worked in DEFENDANTS’ Veteran and Housing program and/or department.

27 4. DEFENDANTS are a California nonprofit corporation that, at all relevant times,
28 were authorized to do business within the State of California and are doing business in the State of

1 California.

2 5. DEFENDANTS own, operate, or otherwise manage a nonprofit corporation that
3 provides comprehensive rehabilitative programs and/or support services via, including but not
4 limited to, DEFENDANTS' at least five (5) shelters, five (5) community service centers, various
5 community-based offices and co-locations and five (5) crisis and suicide hotlines. [DEFENDANTS
6 own, operate, and/or otherwise manage multiple offices, locations/co-locations and/or facilities
7 including but not limited to offices, locations/co-locations and/or facilities in Los Angeles,
8 California, Torrance, California, Wilmington, California, Garden Grove, among other cities located
9 within Orange County and other counties throughout California.¹

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

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

26 **JOINT LIABILITY**

27 8. Under California law, the definition of the terms "to employ" are broadly construed

28 ¹ See <https://www.1736familycrisiscenter.org/index.html> (Last visited on March 6, 2023).

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

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

24 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
25 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
26 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
27 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
28 Employees to these same policies and practices regardless of the location(s) where they worked.

1 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
2 and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common
3 management, who have control over the day-to-day operations and employment matters, including
4 the power to hire and fire, set schedules, issue employee policies, and determine rates of
5 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
6 procedures for all California employees, including issuing the same employee handbooks and other
7 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
8 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

9 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
10 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
11 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
12 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
13 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
14 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
15 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.

16 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
17 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
18 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
19 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members
20 and Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled
21 the wages of PLAINTIFF and the Class Members and Aggrieved Employees in a uniform manner.
22 DEFENDANTS collectively represented to PLAINTIFF and the Class Members and Aggrieved
23 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
24 collectively retained the right to terminate PLAINTIFF's and Class Members and Aggrieved
25 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
26 further collectively represented to PLAINTIFF and Class Members and Aggrieved Employees in
27 writing the details of their compensation, and the manner in which they were to take meal and rest
28 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked

1 and the policies applicable to PLAINTIFF and Class Members and Aggrieved Employees by which
2 DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and Class Members and
3 Aggrieved Employees.

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

9 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
10 control over, applied the same policies and practices, and engaged in the same acts and omissions
11 with regard to the other Class Members and Aggrieved Employees.

12 **CLASS ALLEGATIONS**

13 15. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
14 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
15 seeks to represent are defined as follows and referred to as the "Class" or "Class Members":

16 All individuals who are currently or were formerly employed by
17 DEFENDANTS at any location in California at any time within the
18 four years and 178 days prior to the filing of the initial Complaint
19 ("Class Period").²

- 20 a. Numerosity. While the exact number of Class Members is unknown to
21 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
22 all members is impractical under the circumstances of this case. PLAINTIFF is
23 informed and believes the Class consists of at least 100 individuals.
- 24 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
25 because common questions of law and fact predominate over individual issues.

26
27 ² In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a)
28 (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that
exceed 180 days are tolled from April 6, 2020 to October 1, 2020."

1 Common questions include, but are not limited to, the following: (1) whether
2 DEFENDANTS misclassified Class Members as exempt employees; (2)
3 whether DEFENDANTS understated hours worked and failed to pay all
4 amounts due to PLAINTIFF and the Class Members for wages earned, including
5 minimum and overtime wages, under California law; (3) whether
6 DEFENDANTS provided PLAINTIFF and the Class Members with all meal
7 periods or premium payments in lieu thereof in compliance with California law;
8 (4) whether DEFENDANTS provided PLAINTIFF and the Class Members with
9 all rest periods or premium payments in lieu thereof, in compliance with
10 California law; (5) whether DEFENDANTS provided PLAINTIFF and Class
11 Members with accurate, itemized wage statements in compliance with
12 California law, displaying, including but not limited to, the total hours worked
13 during the pay period; (6) whether DEFENDANTS timely paid PLAINTIFF and
14 the Class Members all wages due upon separation of employment; (7) whether
15 DEFENDANTS failed to reimburse PLAINTIFF and the Class Members for all
16 business expenses; and (8) whether DEFENDANTS violated California
17 Business and Professions Code sections 17200, *et seq.*

- 18 c. Ascertainable Class. The proposed Class is ascertainable as members can be
19 identified and located using information in DEFENDANTS' business, payroll
20 and personnel records.
- 21 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
22 PLAINTIFF suffered a similar injury as members of the Class as a result of
23 DEFENDANTS' common practices regarding, *inter-alia*, misclassification of
24 non-exempt employees as exempt employees, failure to calculate and pay all
25 owed minimum and overtime wages, failure to provide proper meal periods and
26 rest periods or premium compensation in lieu thereof, failure to provide accurate
27 wage statements, failure to reimburse business expenses, and failure to timely
28 pay all wages due upon separation of employment.

- 1 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
2 Class Members. PLAINTIFF has no interests adverse to the interests of the other
3 Class Members. Counsel who represent PLAINTIFF are competent and
4 experienced in litigating similar class action cases and are California lawyers in
5 good standing. Counsel for PLAINTIFF have the experience and resources to
6 vigorously prosecute this case.
- 7 f. Superiority. A class action is superior to other available means for the fair and
8 efficient adjudication of this controversy since individual joinder of all members
9 of the class is impractical. Class action treatment will permit a large number of
10 similarly situated persons to prosecute their common claims in a single forum
11 simultaneously, efficiently, and without the unnecessary duplication of effort
12 and expense that numerous individual actions would engender. Furthermore, as
13 the damages suffered by each individual member of the Class may be relatively
14 small, the expenses and burden of individual litigation would make it difficult
15 or impossible for individual members of the Class to redress the wrongs done to
16 them, while an important public interest will be served by addressing the matter
17 as a class action. The cost to the court system of adjudication of such
18 individualized litigation would be substantial. Individualized litigation would
19 also present the potential for inconsistent or contradictory judgments. Finally,
20 the alternative of filing a claim with the California Labor Commissioner is not
21 superior, given the lack of discovery in such proceedings, the fact that there are
22 fewer available remedies, and the losing party has the right to a trial de novo in
23 the Superior Court.

24 **FACTUAL AND LEGAL ALLEGATIONS**

25 16. During the relevant period, PLAINTIFF, and each of the Class Members and
26 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
27 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
28 Employees, and suffered and/or permitted them to work.

1 17. PLAINTIFF was employed by DEFENDANTS. PLAINTIFF worked for
2 DEFENDANTS in various positions including but not limited to, as a case manager, healthcare
3 navigator, lead case manager and/or similar title(s) at DEFENDANTS' locations/facilities in
4 California, including but not limited to, DEFENDANTS' locations/facilities located in Orange
5 County, California. PLAINTIFF worked in DEFENDANTS' Veteran and Housing program and/or
6 department. PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days per
7 week and often worked beyond eight (8) hours in a day and/or beyond forty hours in a week.

8 18. Based on information and belief, at times, PLAINTIFF was compensated on an
9 hourly basis but only for time counted by DEFENDANTS as hours worked. At times during the
10 relevant period, DEFENDANTS classified PLAINTIFF as a non-exempt employee. At other times
11 during the relevant period, DEFENDANTS misclassified PLAINTIFF as an exempt employee. At
12 all relevant times, PLAINTIFF was a non-exempt employee under the law regardless of
13 DEFENDANTS' classification. From in or around 2019 through in or around October 2020,
14 PLAINTIFF was a non-exempt employee and DEFENDANTS classified her as a non-exempt
15 employee. From on or around October 2020 through the separation of PLAINTIFF's employment
16 on or around July 8, 2022, PLAINTIFF was misclassified by DEFENDANTS as an exempt
17 employee when she was actually a non-exempt employee. During this time, DEFENDANTS
18 misclassified PLAINTIFF as an exempt employee and compensated PLAINTIFF on a salaried basis;
19 DEFENDANTS paid PLAINTIFF a monthly salary without regard for the hours PLAINTIFF
20 worked in a given month.

21 19. At times during the relevant period, DEFENDANTS misclassified PLAINTIFF and
22 other Class Members and Aggrieved Employees as exempt employees to try to evade California
23 wage and hour laws including but not limited to, with respect to payment of minimum wages for all
24 hours worked, payment of overtime wages, and provision of meal and rest periods, even though
25 PLAINTIFF and other misclassified Class Members and Aggrieved Employees did not satisfy any
26 test for exemption under California law. For example, at all relevant times, PLAINTIFF spent at
27 least 90 percent of her workday performing non-exempt/non-managerial-related job duties,
28 including but not limited to, data entry and/or preparing routine reports and/or other performing

1 other clerical work tasks. PLAINTIFF did not have the authority to hire or terminate employees.
2 PLAINTIFF did not regularly exercise discretion/independent judgment in her job and as explained,
3 typically spent more than fifty percent of her workday and/or at least ninety percent of her workday
4 performing non-exempt duties. Moreover, PLAINTIFF did not earn a salary equivalent to at least
5 twice the state minimum wage for full-time work. Based on further information and belief, other
6 Class Members and Aggrieved Employees were also not compensated with a monthly salary that
7 equated to twice the California minimum wage rate. See, Labor Code section 515 and Cal. Code of
8 Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must earn "a
9 monthly salary equivalent to no less than two (2) times the state minimum wage for full-time
10 employment"]. Based on information and belief, DEFENDANTS misclassified other Class
11 Members and Aggrieved Employees as salaried/exempt even though those Class Members and
12 Aggrieved Employees spent more than fifty percent of their workdays performing non-exempt job
13 duties, did not regularly exercise discretion and independent judgment on the job, and/or did not
14 otherwise satisfy any test for exemption under California law.

15 20. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
16 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
17 underpayment of minimum wages. DEFENDANTS failed to compensate PLAINTIFF and Class
18 Members and Aggrieved Employees for all hours worked by virtue of, including but not limited to,
19 its misclassification of PLAINTIFF and Class Members and Aggrieved Employees as
20 exempt/salaried when they were non-exempt employees. Moreover, even when PLAINTIFF and
21 other Class Members and Aggrieved Employees were classified as non-exempt, DEFENDANTS
22 failed to compensate PLAINTIFF and Class Members and Aggrieved Employees for all hours
23 worked, by virtue of including but not limited to unpaid work completed during
24 interrupted/shortened meal periods (described below), time-rounding policies and practices,
25 payment according to scheduled hours worked instead of actual time worked, and mandated pre-
26 shift/post-shift and/or other mandated off-the-clock work policies and practices. Based on
27 information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal
28 period start and end times and/or automatically deducting at least thirty minutes per shift for meal

1 periods, despite having actual and/or constructive knowledge that PLAINTIFF and other Class
2 Members and Aggrieved Employees were subject to DEFENDANTS' control during purported
3 meal periods and/or were otherwise not afforded lawful meal periods, depriving PLAINTIFF and
4 Class Members and Aggrieved Employees of all wages owed.

5 21. Based on information and belief, Class Members and Aggrieved Employees were
6 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
7 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
8 the clock work policies and/or practices. For example, DEFENDANTS compensated PLAINTIFF
9 only for scheduled hours worked rather than all hours actually worked by including but not limited
10 to, setting a fixed monthly salary based on the scheduled hours worked. As such, PLAINTIFF and
11 other Class Members and Aggrieved Employees were not compensated for all hours worked.

12 22. For example, DEFENDANTS' check register report, wage statements and/or payroll
13 records for PLAINTIFF for including but not limited to the following dates, all show exactly 78.67
14 hours/units worked: check dated 3/7/22; check dated 4/7/22; check dated 5/6/22; check dated
15 5/20/22. Based on information and belief, most if not all of DEFENDANTS' wage statements issued
16 to Class Members and Aggrieved Employees evidence payment according to scheduled hours
17 worked and/or payment according to a fixed monthly salary based on the scheduled hours worked
18 rather than actual hours worked, resulting in the underpayment of minimum wages and overtime
19 wages owed to Class Members and Aggrieved Employees.

20 23. Based on information and belief, Class Members and Aggrieved Employees were
21 pressured to complete at least some of their work tasks off-the-clock in order to meet
22 DEFENDANTS's demands and/or expectations. For example, at times, including but not limited
23 to, from in or around late October 2020 through in or around the first week of July of 2022, due to
24 pressure from her supervisor, understaffing and/or the need to keep up with her assigned caseload,
25 PLAINTIFF was required to complete at least approximately five (5) to six (6) hours of off-the-
26 clock work outside of her scheduled shift times each workweek, including but not limited to, before
27 her scheduled shift start time and/or after her scheduled shift end time, during unpaid meal periods
28 and/or during purported days off. This time was neither recorded nor compensated resulting in the

1 significant underpayment of minimum wages and overtime wages owed to PLAINTIFF.

2 24. Moreover, at times, including but not limited to, during most, if not all workweeks
3 PLAINTIFF worked, from in or around April 2019 through in or around mid-October 2020,
4 PLAINTIFF was paid an hourly rate and regularly performed at least approximately fifteen hours
5 of off-the-clock work per workweek due to DEFENDANTS' refusal to pay for time worked beyond
6 eight (8) hours in a workday and/or forty (40) hours in a workweek. As such, DEFENDANTS
7 instructed PLAINTIFF to perform work duties prior to clocking in for the start of her shift and/or to
8 clock out for meal periods and/or for the end of her shifts but to continue working to complete her
9 job duties whenever her workload required her to work overtime hours and/or beyond her scheduled
10 hours. As such, PLAINTIFF was deprived of all owed wages including but not limited to minimum
11 and overtime wages. Based on information and belief, Class Members and Aggrieved Employees
12 were required to complete off-the-clock work outside of scheduled shifts due to, including but not
13 limited to, DEFENDANTS' refusal to pay for time worked beyond eight (8) hours in a workday
14 and/or forty (40) hours in a workweek, resulting in the underpayment of minimum wages and
15 overtime wages owed to Class Members and Aggrieved Employees.

16 25. Based on information and belief, DEFENDANTS failed to pay Class Members and
17 Aggrieved Employees for time they were required to spend completing orientation, policy
18 questionnaires, and/or time spent completing the onboarding process including but not limited to
19 reviewing various documents and policies provided by DEFENDANTS. Based on information and
20 belief, this work time was completed off-the-clock and was not compensated.

21 26. Based on further information and belief, DEFENDANTS implemented a time-
22 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
23 Aggrieved Employees of compensable time because the time-rounding system implemented by
24 DEFENDANTS would almost always, if not always, result in understating actual compensable work
25 time. For example, based on information and belief, DEFENDANTS required PLAINTIFF and
26 other Class Members and Aggrieved Employees to sign a time sheet that notated only the scheduled
27 hours worked in the pay period and/or month. Based on information and belief DEFENDANTS only
28 paid PLAINTIFF and other Class Members and ¹²Aggrieved Employees for the scheduled hours

1 notated on the time sheet, as opposed to all hours actually worked, resulting in the underpayment of
2 minimum and straight time wages owed to PLAINTIFF and other Class Members and Aggrieved
3 Employees. For instance, based on information and belief, DEFENDANTS required PLAINTIFF
4 to sign a time sheet that notated DEFENDANTS' set schedule for PLAINTIFF with a precise "In"
5 time of 8:00 a.m. and a precise "Out" time of 4:30 p.m. and with a daily automatic deduction for a
6 purportedly thirty-minute off-duty meal period for each shift worked. Based on information and
7 belief, at times DEFENDANTS paid PLAINTIFF a salary amount based on the scheduled hours
8 worked regardless of the actual hours worked. For example, DEFENDANTS' time sheets for
9 PLAINTIFF for including but not limited to, the following dates, show a precise "In" time of 8:00
10 a.m. and a precise "Out" time of 4:30 p.m. with exactly .50 hours listed for "Lunch:" 5/17/21,
11 5/18/21, 5/19/21, 5/20/21, 5/21/21, 5/24/21, 5/25/21, 5/26/21, 5/27/21 5/28/21, 6/1/21, 6/2/21,
12 6/3/21, 6/4/21, 6/7/21, 6/8/21, 6/9/21, 6/10/21, 6/15/21, 6/16/21, 6/17/21, 6/18/21, 6/21/21, 6/22/21,
13 6/23/21, 6/24/21, 6/25/21, 6/28/21, 6/29/21, and 6/30/21. However, as explained above,
14 PLAINTIFF consistently worked hours outside of her scheduled shift times and during purported
15 meal periods resulting in unpaid wages.

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

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

27 29. Based on information and belief, DEFENDANTS failed and continue to fail to pay
28 Class Members and Aggrieved Employees two₁₃ times their regular rate of pay for time worked

beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

30. Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other Class Members and Aggrieved Employees.

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

32. Based on information and belief, other Class Members and Aggrieved Employees were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, during PLAINTIFF's employment, PLAINTIFF was rarely, if ever, able to take a thirty-minute, uninterrupted meal period due to the need to keep up with her assigned caseload, meet work deadlines, make/respond to work communications and/or complete other work tasks. At times, DEFENDANTS required PLAINTIFF to clock out for meal periods but to continue working, resulting in meal period law violations, off-the-clock work, and the underpayment of minimum wages and overtime wages owed to PLAINTIFF. At times, DEFENDANTS misclassified PLAINTIFF as exempt/salaried and instructed PLAINTIFF that she was not entitled to and/or

1 allowed to take thirty-minute, off-duty meal periods during her shifts. As such, PLAINTIFF
2 consistently worked through most, if not all of her owed meal periods during her employment.
3 DEFENDANTS did not pay PLAINTIFF any meal period premiums for these missed and/or
4 otherwise legally noncompliant meal periods.

5 33. Based on information and belief, DEFENDANTS implemented policies and/or
6 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
7 DEFENDANTS' control during unpaid meal periods.

8 34. Based on information and belief, DEFENDANTS required Class Members and
9 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
10 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
11 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
12 unaccounted pre-shift off-the-clock work.

13 35. Based on information and belief, despite DEFENDANTS' failure to provide lawful
14 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
15 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
16 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
17 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
18 Members and Aggrieved Employees did not receive lawful meal periods.

19 36. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
20 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
21 compliant thirty (30) minute second meal period.

22 37. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
23 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal
24 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
25 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

26 38. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
27 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
28 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,

1 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
2 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
3 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
4 58.

5 39. Based on information and belief, DEFENDANTS had actual and/or constructive
6 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
7 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
8 Employees, in violation of California's meal period laws.

9 40. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
10 Employees, an additional hour of wages at their respective regular rates of compensation for each
11 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
12 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
13 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
14 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
15 the regular rate or compensation for purposes of calculating the owed meal period premium.

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

20 42. PLAINTIFF and other Class Members and Aggrieved Employees were not
21 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
22 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
23 nor instruction as to the taking of duty-free rest periods.

24 43. Based on information and belief, DEFENDANTS did not have a have a compliant
25 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
26 practice. For example, during her employment, PLAINTIFF was rarely, if ever, able to take a full
27 ten-minute off duty rest period due to the need to keep up with her assigned caseload, meet work
28 deadlines, make/respond to work communications and/or complete other work tasks. Moreover, on

1 information and belief, DEFENDANTS failed to authorize and permit rest periods that were a “net”
2 ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited
3 Class Members and Aggrieved Employees to only ten-minute rest periods, requiring them to be
4 back at their workstations within ten minutes of leaving, in violation of California rest period law.
5 DEFENDANTS’ failure to communicate that the rest period is a net ten minutes deprived Class
6 Members and Aggrieved Employees of their rights to a full rest period, as such as policy only
7 relieves Class Members and Aggrieved Employees from their workstation for ten minutes to travel
8 to and from a rest area and be back at the workstation by the end of that ten minutes.

9 44. At other times, PLAINTIFF and other Class Members and Aggrieved Employees did
10 not receive compliant rest periods due to DEFENDANTS’ misclassification scheme.

11 45. Based on information and belief, Class Members and Aggrieved Employees’ rest
12 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
13 understaffing, the nature and constraints of their job duties, and/or due to commentary from
14 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
15 compliant rest periods.

16 46. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
17 lasting longer than ten hours.

18 47. Based on information and belief, DEFENDANTS implemented policies and/or
19 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
20 all duties and DEFENDANTS’ control during rest periods.

21 48. Based on information and belief, Class Members and Aggrieved Employees were
22 pressured to complete their work duties according to a designated schedule such that rest periods
23 were only taken once tasks were completed, and/or as time permitted.

24 49. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
25 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
26 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
27 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
28 period premium for failure to incorporate all non-discretionary remuneration, including but not

1 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
2 regular rate of compensation for purposes of calculating the owed rest period premium.

3 **50. Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
4 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
5 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
6 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
7 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
8 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
9 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
10 during the pay period and the corresponding number of hours worked at each hourly rate by the
11 employee.

12 **51.** DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
13 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
14 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
15 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
16 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
17 of all duties and employer control during unpaid meal periods, payment according to scheduled
18 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
19 practices) which results in a violation of Labor Code section 226(a).

20 **52.** As described herein, based on information and belief, DEFENDANTS also failed to
21 incorporate all forms of non-discretionary compensation earned during the pay period into the
22 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
23 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

24 **53.** Moreover, based on information and belief, DEFENDANTS issued wage statements
25 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
26 section 226(a), by among other things, failing to list the correct name and/or address of the legal
27 entity that is the employer.

28 **54.** As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class

1 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
2 required information. As such, DEFENDANTS violated Labor Code section 226.

3 **55. Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
4 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
5 Employees all wages that were due and owing upon termination or resignation. Based on
6 information and belief, DEFENDANTS untimely provide final wages to Class Members and
7 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

8 **56.** Upon separation of employment, Class Members and Aggrieved Employees' final
9 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
10 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
11 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
12 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
13 sick leave and/or paid time off wages at the properly accrued rates.

14 **57.** These violations subject DEFENDANTS to civil penalties under Labor Code section
15 203, 210, and/or 256.

16 **58. Unreimbursed Business Expenses.** Based on information and belief,
17 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
18 business expenses as a direct consequence of the performance of their job duties without providing
19 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
20 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
21 and maintain work tools that are supposed to be the responsibility of the employer.

22 **59.** Based on information and belief, DEFENDANTS shifted the costs of doing business
23 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
24 including but not limited to, purchase and/or maintenance of uniforms/clothing/safety/protective
25 equipment and /or personal tools, use of Class Members and Aggrieved Employees' personal
26 vehicles and/or the use of Class Members and Aggrieved Employees' personal mobile phone and
27 data usage for work related purposes, including but not limited to, receiving and responding to work
28 related messages and/or phone calls. For example, based on information and belief, at times, Class

1 Members and Aggrieved Employees received calls/messages to their personal cell phones/mobile
2 devices from supervisors and/or other Class Members and Aggrieved Employees regarding
3 scheduling and/or other work tasks but were not provided any/full reimbursement from
4 DEFENDANTS for this personal cell phone use..

5 60. On further information and belief, DEFENDANTS have a policy in practice of
6 failing to reimburse PLAINTIFF and other Class Members and Aggrieved Employees for all
7 expenses that were incurred as a result of being required to work remotely and/or from their homes.
8 For example, as explained above, PLAINTIFF was regularly required to perform off-the-clock work
9 outside of her scheduled shifts, including but not limited to, during purported days off and/or on her
10 vacation days. Oftentimes, if not always, this off-the-clock work PLAINTIFF performed on
11 purported days off and/or outside of her scheduled shifts was performed at PLAINTIFF's home. As
12 a result of working from home, PLAINTIFF and other Class Members and Aggrieved Employees
13 were necessarily required to use their home internet, electricity, and other utilities in the discharge
14 of their duties, yet did not receive any and/or full reimbursement from DEFENDANTS for these
15 business expenses. For instance, at times during the COVID pandemic, PLAINTIFF was required
16 to work exclusively from her home but was not reimbursed by DEFENDANTS at all for her internet
17 or electricity costs.

18 61. Also, DEFENDANTS required PLAINTIFF to purchase a printer for work but did
19 not reimburse PLAINTIFF for the expenses she incurred in connection therewith. Based on
20 information and belief, DEFENDANTS have a policy and practice of failing to provide
21 reimbursement/full reimbursement to Class Members and Aggrieved Employees for all tools and/or
22 equipment Class Members and Aggrieved Employees were required to purchase and/or maintain as
23 a direct consequence of carrying out their assigned job duties.

24 62. Based on information and belief, PLAINTIFF and other Class Members and
25 Aggrieved Employees were/are at times required to use their personal vehicles for work purposes
26 without receiving any reimbursement from DEFENDANTS and /or full reimbursement from
27 DEFENDANTS, including but not limited to, reimbursement at the applicable legally mandated
28 Internal Revenue Service (IRS) per mile compensation rate. For example, based on information and

1 belief, at times Class Members and Aggrieved Employees were required to drive between job sites
2 and/or use their personal vehicles for other work purposes without receiving any and/or full
3 reimbursement from DEFENDANTS for the vehicle-related expenses incurred in connection
4 therewith. For instance, at times, DEFENDANTS purported to reimburse PLAINTIFF for some
5 vehicle-related expenses but any amount offered/provided fell below the applicable legally
6 mandated IRS per mile compensation rate and/or otherwise failed to compensate PLAINTIFF for
7 all vehicle-related expenses incurred and/or any reimbursement was not provided until at least
8 months after PLAINTIFF had incurred the expenses.

9 63. Based on information and belief, DEFENDANTS regularly failed to reimburse and
10 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
11 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
12 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
13 and/or carrying out the duties assigned by DEFENDANTS.

14 64. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
15 full reimbursement for all reasonable expenses associated with carrying out their duties required
16 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
17 expenses in violation of Labor Code section 2802.

18 65. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
19 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
20 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

21 **FIRST CAUSE OF ACTION**

22 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
23 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

24 66. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

25 67. It is fundamental that an employer must pay its employees for all time worked.
26 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
27 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
28 permits deductions from wages when the employer is required or empowered to do so by state or
federal law or when the deduction is expressly authorized in writing by the employee for specified

1 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
2 prohibits the pay of less than a statutory or contractual wage scale.

3 68. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
4 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
5 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
6 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
7 period is unlawful.

8 69. DEFENDANTS violated California’s minimum wage laws by failing to compensate
9 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
10 DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
11 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
12 and/or payment according to scheduled hours worked rather than actual hours worked (described
13 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
14 wages.

15 70. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
16 Class Members for all hours worked.

17 71. Based on information and belief, PLAINTIFF and other Class Members that were
18 paid on a salary basis and/or otherwise misclassified as exempt were denied all owed minimum
19 wages for all hours worked due to DEFENDANTS’ misclassification scheme.

20 72. Based on information and belief, DEFENDANTS had actual or constructive
21 knowledge that its misclassification scheme, time-rounding policies and practices, auto-deduction
22 policies and practices for meal periods, failure to relieve employees of all duties and employer
23 control during unpaid meal periods, policy and practice of payment according to scheduled work
24 time rather than actual work time, and/or other mandated off-the-clock work resulted in the
25 underpayment of minimum wages owed to PLAINTIFF and other Class Members.

26 73. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
27 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
28 attorney’s fees and costs, in an amount to be proved at trial.

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(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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1 other Class Members.

2 80. DEFENDANTS' conduct described above is in violation of California Labor Code
3 sections 510 and 1194 and all applicable Wage Orders.

4 81. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
5 wages, plus attorney's fees and costs, in an amount to be proved.

6 **THIRD CAUSE OF ACTION**

7 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

9 82. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 83. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
11 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
12 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
13 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
14 waived, but only under the following circumstances: (1) if an employee's total work period in a day
15 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
16 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
17 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
18 waived by mutual consent of the employer and employee, but only if the first meal period was not
19 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
20 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
21 done so.

22 84. Employers must pay employees an additional hour of wages at the employees'
23 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
24 meal period, first meal period provided after five (5) hours, second meal period provided after 10
25 hours). Lab. Code § 226.7.

26 85. As explained above, PLAINTIFF and other Class Members were consistently unable
27 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
28 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary

1 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
2 completely.

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

7 87. Moreover, based on information and belief, Class Members did not receive a timely,
8 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

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

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

19 90. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
20 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
21 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
22 all in an amount to be proved at trial.

23 **FOURTH CAUSE OF ACTION**

24 **Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

25 91. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 92. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
27 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
28 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period

1 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
2 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
3 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
4 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
5 The rest period requirement obligates employers to permit and authorize employees to take off-duty
6 rest periods, meaning employers must relieve employees of all duties and relinquish control over
7 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

8 93. If the employer fails to provide any required rest period, the employer must pay the
9 employee one hour of pay at the employee’s regular rate of compensation for each workday the
10 employer did not provide at least one legally required rest period, pursuant to Labor Code section
11 226.7.

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

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

23 96. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
24 second, or third rest periods as required by California law.

25 97. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
26 actual and/or constructive knowledge that its misclassification scheme, and other unlawful policies
27 and practices resulted in the denial of rest periods owed to PLAINTIFF and other Class Members.

28 98. Moreover, based on information²⁶ and belief, DEFENDANTS failed to pay a rest

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

6 99. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
7 hour of additional pay at the regular rate of compensation for each workday that a required rest
8 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
9 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
10 trial.

11 **FIFTH CAUSE OF ACTION**
12 **Failure to Furnish Accurate Itemized Wage Statements**
13 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

14 100. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 101. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
16 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
17 wage statement accurately stating the following:

18 (1) gross wages earned, (2) total hours worked by the employee,
19 except for any employee whose compensation is solely based on a
20 salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial
22 Welfare Commission, (3) the number of piece-rate units earned and
23 any applicable piece rate if the employee is paid on a piece-rate basis,
24 (4) all deductions, provided that all deductions made on written orders
25 of the employee may be aggregated and shown as one item, (5) net
26 wages earned, (6) the inclusive dates of the period for which the
27 employee is paid, (7) the name of the employee and his or her social
28 security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

102. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
meal and rest periods that complied with Labor Code section 226.7, the wage statements
DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to

1 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
2 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
3 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
4 during the pay period and the corresponding number of hours worked at each hourly rate by the
5 employee, in violation of Labor Code section 226(a)(9).

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

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

25 105. Based on information and belief, wage statements issued by DEFENDANTS failed
26 to list all applicable hourly rates in effect during the pay period and the corresponding number of
27 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
28 For example, as described herein, based on information and belief, DEFENDANTS failed to

1 incorporate all forms of non-discretionary compensation earned during the pay period into the
2 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
3 of overtime worked by Class Members.

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

7 107. Based on information and belief, wage statements issued by DEFENDANTS failed
8 to list the inclusive dates of the pay period for which the Class Member is being paid.

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

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

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

18 111. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
19 Class Members with accurate, itemized wage statements.

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

1 113. Pursuant to California Labor Code section 226I, PLAINTIFF and Class Members are
2 entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
3 violation occurred and one hundred dollars per employee per violation for each subsequent pay
4 period, not to exceed an aggregate penalty of four thousand dollars per employee.

5 114. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
6 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
7 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
8 provide currently employed Class Members with inaccurate wage statements in violation of
9 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
10 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
11 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
12 with California Labor Code § 226(a).

13 115. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
14 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
15 attorneys' fees, and costs of suit.

16 **SIXTH CAUSE OF ACTION**

17 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
18 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

19 116. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

20 117. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
21 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
22 payable immediately."

23 118. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
24 employee not having a written contract for a definite period quits his or her employment, his or her
25 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
26 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
27 to his or her wages at the time of quitting."

28 119. Based in information and belief, DEFENDANTS failed and continue to fail to timely
pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of

1 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
2 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
3 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
4 paid time off wages at the properly accrued rates.

5 120. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
6 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
7 pay, plus attorney's fees and costs, in an amount to be proved at trial.

8 **SEVENTH CAUSE OF ACTION**
9 **Failure to Reimburse Business Expenses**
10 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

18 123. Among other things, under California law, when employees must use their personal
19 cellphones for work-related purposes, the employer must reimburse them for a reasonable
20 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
21 Cal.App⁴th 1137, 1140. To show liability, an employee will only need to show that he or she was
22 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
23 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
24 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
25 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Ca⁴th 554.

26 124. As described above, PLAINTIFF and the Class Members were improperly required
27 to pay for business expenses that are legally the responsibility of the employer.

28 125. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
reimbursement for all reasonable expenses associated with carrying out their duties required that

1 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
2 violation of Labor Code section 2802.

3 126. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
4 Members have suffered injury in that they were not completely reimbursed as mandated by
5 California law.

6 127. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
7 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
8 attorneys' fees, and costs of suit.

9 **EIGHTH CAUSE OF ACTION**

10 **Unfair Competition**

11 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

12 128. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 129. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
14 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
15 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
16 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
17 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
18 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
19 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
20 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
21 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
22 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
23 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
24 number of hours worked as a result of DEFENDANTS' misclassification scheme/time-
25 rounding/auto deduction policies and practices, payment according to scheduled hours worked
26 and/or other off-the-clock work policies and practices).

27 130. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
28 California Labor Code, DEFENDANTS have gained a competitive advantage over other
comparable companies doing business in the State of California that comply with their obligations

1 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
2 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
3 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
4 minimum and overtime wages and to pay all wages due upon separation of employment of their
5 employees.

6 131. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
7 and Class Members have suffered injury in fact and lost money or property, as described in more
8 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
9 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
10 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
11 unlawful and unfair business practices.

12 132. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
13 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
14 engaging in each of the unlawful practices and policies set forth herein.

15 133. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
16 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
17 by law.

18 **NINTH CAUSE OF ACTION**

19 **Violation of the Private Attorneys General Act of 2004**

20 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

21 134. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

22 135. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
23 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFF,
24 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

25 All current and former non-exempt employees that worked for
26 DEFENDANTS at any location in California at any time from one
27 year plus 65 days from the filing of the initial Complaint through the
28 present ("PAGA Period").

1 136. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
2 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
3 limitations period and suffered one or more of the Labor Code violations set forth herein.
4 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
5 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
6 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
7 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
8 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*
9 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
10 for all known violations committed by the employer - regardless of whether Plaintiff experienced
11 all violations personally. *Id.* at 760-761.

12 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

13 137. On March 9, 2023, PLAINTIFF, through counsel, gave written notice by online filing
14 with the California Labor and Workforce Development Agency ("LWDA") informing it that
15 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
16 in this Complaint ("PAGA Notice").

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

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

26 140. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
27 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
28 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,

1 512, 515, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
2 applicable Wage Orders.

3 141. As set forth above, DEFENDANTS have committed numerous violations of the
4 California Labor Code due to including but not limited to their failure to pay all owed minimum
5 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
6 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
7 and failure to pay all wages owed upon separation of employment as alleged above. Moreover, at
8 times, based on information and belief, some of the Aggrieved Employees were incorrectly
9 classified by DEFENDANTS as exempt, but were at all relevant times, non-exempt employees as
10 alleged herein. PAGA penalties are in addition to any other relief available under the Labor Code.

11 142. Additionally, DEFENDANTS have violated the following Labor Code sections and
12 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

13 **Failure to Keep Accurate Records**

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

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

23 145. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
24 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
25 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
26 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
27 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
28

1 period during which the referenced statutes and Wage Order provisions were violated.³

2 **Statutory Wage Violations**

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

14 **Refusal to Make Payment**

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

23
24 ³ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
25 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
26 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

27 ⁴ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 **Standard Conditions of Labor Violations**

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

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

20 150. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
21 each pay period during which the statute provisions were violated. See Lab. Code §225.5
22 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
23 provided in this article, every person who unlawfully withholds wages due any employee in
24 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
25 to pay each employee”).

26 **Sick Leave Violations**

27 151. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
28

1 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
2 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
3 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
4 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
5 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
6 compensation into the sick leave pay rate calculation.

7 152. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
8 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
9 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
10 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
11 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

16 154. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
17 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
18 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
19 were entitled to the maximum number of hours accruable.

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

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

26 157. On information and belief, PLAINTIFF alleges that all of these practices were
27 experienced and continue to be experienced by other Aggrieved Employees.

28 158. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the

1 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
2 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

3 **Failure To Provide Supplemental Paid Sick Leave**

4 159. Labor Code § 248.2 provides that all employers with 26 or more employees are
5 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
6 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
7 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
8 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
9 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
10 Labor Code section 248.6.

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

12 160. California Labor Code section 227.3 provides that when an employer policy provides
13 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
14 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
15 employee’s final rate in accordance with such contract of employment or employer policy respecting
16 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
17 off upon termination.

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

23 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

24 162. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
25 require any employee or applicant for employment to agree, in writing, to any term or condition
26 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
27 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
28 conditions of employment including but not limited to, unlawful non-solicitation/non-compete

1 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
2 waivers of rights, unlawful compensation agreements, and/or as a condition of obtaining and/or
3 continuing employment in violation of Labor Code section 432.5.

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

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

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

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

28 167. Based on further information and belief, DEFENDANTS knew that requiring

1 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
2 condition of obtaining and/or holding employment was unlawful.

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

5 Unlawful Inquires into Criminal History

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

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

15 171. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
16 Code section 432.7. By asking about convictions at the application phase or prior to extending an
17 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
18 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
19 disclose arrests and/or convictions as a condition of employment.

20 172. Under the provisions of PAGA and the above mentioned Labor Code sections,
21 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
22 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
23 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
24 interpretations of these laws by California Courts and administrative bodies, as well as any other
25 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

1 Dated: June 7, 2023

CROSNER LEGAL, PC

2
3 By: Samantha Smith
4 Zachary M. Crosner, Esq.
5 Jamie Serb, Esq.
6 Samantha Smith, Esq.
7 Attorneys for Plaintiff
8 CYNTHIA MACIAS
9

10 **DEMAND FOR JURY TRIAL**

11 PLAINTIFF demands a trial by jury on all claims so triable.

12 Dated: June 7, 2023

CROSNER LEGAL, PC

13
14 By: Samantha Smith
15 Zachary M. Crosner, Esq.
16 Jamie Serb, Esq.
17 Samantha Smith, Esq.
18 Attorneys for Plaintiff
19 CYNTHIA MACIAS
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PROOF OF SERVICE
CYNTHIA MACIAS VS. 1736 FAMILY CRISIS CENTER ET AL.
Orange County Superior Court Case No. 30-2023-01311143-CU-OE-CXC

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On June 7, 2023, I served true copies of the following document(s) described as

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☐ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error.

☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine and the transmission was reported as complete and without error.

☒ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope, with postage paid, and deposited with a post office, mail box, sub-post office, substation, mail chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal Service or an affiliate thereof, at or near Phoenix, Arizona.

☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with Federal Express, an express carrier, in Phoenix, Arizona, or delivered with any and all delivery fees to an authorized courier or driver authorized by the express service carrier to receive documents.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that I am employed in the office of a member of the bar of this
Court at whose direction the service was made.

3 Executed on June 7, 2023, at Los Angeles, California.

4
5 
Jessica Ball

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SERVICE LIST
CYNTHIA MACIAS VS. 1736 FAMILY CRISIS CENTER ET AL.
Orange County Superior Court Case No. 30-2023-01311143-CU-OE-CXC

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