

Robert Drexler (SBN 119119)  
Robert.Drexler@CapstoneLawyers.com  
Molly DeSario (SBN 230763)  
Molly.DeSario@CapstoneLawyers.com  
Jonathan Lee (SBN 267146)  
Jonathan.Lee@CapstoneLawyers.com  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, California 90067  
Telephone: (310) 556-4811  
Facsimile: (310) 943-0396

Attorneys for Plaintiff Jessica Penetrante

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/24/2023** at 11:41:00 AM

Clerk of the Superior Court  
By Katie Winburn, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JESSICA PENETRANTE, individually, and  
on behalf of other members of the general  
public similarly situated, and as an  
aggrieved employee pursuant to the Private  
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

PRESIDIO COMPONENTS, INC., a  
California corporation; and DOES 1  
through 10, inclusive,

Defendants.

Case No.: 37-2023-00007892-CU-OE-CTL

**FIRST AMENDED CLASS ACTION  
COMPLAINT & ENFORCEMENT  
ACTION UNDER THE PRIVATE  
ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE §§ 2698, *ET  
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (4) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (8) Violation of California Business & Professions Code §§ 17200, *et seq.*

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(Unlawful Business Practices); and  
(9) Violation of California Business &  
Professions Code §§ 17200, *et seq.* (Unfair  
Business Practices)

**Jury Trial Demanded**

1 Plaintiff Jessica Penetrante, individually and on behalf of all other members of the  
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved  
3 employees, alleges as follows:

#### 4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure  
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil  
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other  
8 current and former employees who worked for Defendants in California as non-exempt,  
9 hourly paid employees and received at least one wage statement and against whom one or  
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any  
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission  
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,  
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the  
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction  
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes  
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s  
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either  
19 citizens of California, have sufficient minimum contacts in California, or otherwise  
20 intentionally avail themselves of the California market so as to render the exercise of  
21 jurisdiction over them by the California courts consistent with traditional notions of fair play  
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action  
23 because there is no complete diversity, and this case falls within the statutory exceptions to  
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).  
25 Upon information and belief, two-thirds or more of the class members and Defendants are  
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens  
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant  
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed  
2 within the past three (3) years on behalf of the same proposed class against Defendants  
3 asserting the same or similar factual allegations.

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

#### 11 **THE PARTIES**

12 4. Plaintiff Jessica Penetrante is a resident of San Diego, California. Defendants  
13 employed Plaintiff as an hourly paid, non-exempt Quality Control Technician from  
14 approximately May 2020 to September 2022. Plaintiff worked for Defendants at their  
15 location in San Diego, California. During her employment, Plaintiff typically worked eight  
16 (8) hours or more per day, and five (5) to six (6) days per week. Plaintiff's primary job duties  
17 included, without limitation, monitoring and analyzing the quality of capacitor parts.

18 5. PRESIDIO COMPONENTS, INC. was and is, upon information and belief, a  
19 California corporation, and at all times hereinafter mentioned, an employer whose employees  
20 are engaged throughout this county, the State of California, or the various states of the United  
21 States of America.

22 6. Plaintiff is unaware of the true names or capacities of the Defendants sued  
23 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to  
24 amend the complaint and serve such fictitiously named Defendants once their names and  
25 capacities become known.

26 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10  
27 were the partners, agents, owners, or managers of PRESIDIO COMPONENTS, INC. at all  
28 relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, PRESIDIO COMPONENTS, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “PRESIDIO”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

9. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

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

## GENERAL ALLEGATIONS

11. Defendants manufacture commercial ceramic, military, space, high temperature, pulse energy, and microwave capacitors used in a variety of commercial, military, and high reliability space applications. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in San Diego, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them

1 company-wide, regardless of their employees' assigned locations or positions.

2 13. Upon information and belief, Defendants maintain a centralized Payroll  
3 department at their corporate headquarters in San Diego, California, which processes payroll  
4 for all non-exempt, hourly paid employees working for Defendants at their various locations  
5 in California, including Plaintiff and class members. Based upon information and belief,  
6 Defendants issue the same formatted wage statements to all non-exempt, hourly paid  
7 employees in California, irrespective of their work locations. Upon information and belief,  
8 Defendants process payroll for departing employees in the same manner throughout the State  
9 of California, regardless of the manner in which each employee's employment ends.

10 14. Defendants continue to employ non-exempt or hourly paid employees in  
11 California.

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

16 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class  
17 members were not paid for all hours worked because all hours worked were not recorded.

18 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
19 should have known that Plaintiff and class members were entitled to receive certain wages for  
20 overtime compensation and that they were not receiving certain wages for overtime  
21 compensation.

22 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
23 should have known that Plaintiff and class members were entitled to be paid at a regular rate  
24 of pay, and corresponding rates of pay for overtime wages and/or rest period premiums, that  
25 included as eligible income all remuneration required by law, including but not limited to, all  
26 income derived from incentive pay, nondiscretionary bonuses, and/or other forms of  
27 compensation, but failed to include all forms of remuneration in calculating the regular rate of  
28 pay for Plaintiff and class members.

1           19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
2 should have known that Plaintiff and class members were entitled to receive at least minimum  
3 wages for compensation and that they were not receiving at least minimum wages for work  
4 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff  
5 and class members were not paid at least minimum wages for work done off-the-clock.

6           20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
7 should have known that Plaintiff and/or class members were entitled to meal periods in  
8 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
9 one (1) additional hour of pay at their regular rates of pay when they were not provided with  
10 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and/or class members  
11 were not provided with all meal periods or payment of one (1) additional hour of pay at their  
12 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal  
13 period.

14           21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
15 should have known that Plaintiff and class members were entitled to rest periods in  
16 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
17 one (1) additional hour of pay at their regular rates of pay when they were not authorized and  
18 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff  
19 and class members were not authorized and permitted to take compliant rest periods, nor did  
20 Defendants provide Plaintiff and class members with payment of one (1) additional hour of  
21 pay at their regular rates of pay when they were not authorized and permitted to take a  
22 compliant rest period.

23           22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff and class members were entitled to receive complete and  
25 accurate wage statements in accordance with California law. In violation of the California  
26 Labor Code, Plaintiff and class members were not provided complete and accurate wage  
27 statements.

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

1 should have known that they had a duty to maintain accurate and complete payroll records in  
2 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,  
3 knowingly, and intentionally failed to do so.

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

10 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
11 should have known that Plaintiff and class members were entitled to timely payment of wages  
12 during their employment. In violation of the California Labor Code, Plaintiff and class  
13 members did not receive payment of all wages, including, but not limited to, overtime wages,  
14 minimum wages, rest period premiums, and/or sick leave pay, within permissible time  
15 periods.

16 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
17 should have known that Plaintiff and class members were entitled to receive sick leave  
18 benefits to be paid at a regular rate of pay, that included, as eligible income, all income  
19 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation,  
20 but failed to include all forms of remuneration in calculating the regular rate of pay for sick  
21 leave pay.

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

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1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 28. At all times herein set forth, PAGA provides that any provision of law under  
3 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be  
4 assessed and collected by the LWDA for violations of the California Labor Code and  
5 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a  
6 civil action brought on behalf of themselves and other current or former employees pursuant  
7 to procedures outlined in California Labor Code section 2699.3.

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

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

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

- 17 (a) The aggrieved employee or representative shall give written notice by  
18 online filing with the LWDA and by certified mail to the employer of  
19 the specific provisions of the California Labor Code alleged to have  
20 been violated, including the facts and theories to support the alleged  
21 violation.
- 22 (b) An aggrieved employee’s notice filed with the LWDA pursuant to  
23 2699.3(a) and any employer response to that notice shall be  
24 accompanied by a filing fee of seventy-five dollars (\$75).
- 25 (c) The LWDA shall notify the employer and the aggrieved employee or  
26 representative by certified mail that it does not intend to investigate the  
27 alleged violation (“LWDA Notice”) within sixty (60) calendar days of  
28 the postmark date of the aggrieved employee’s notice. Upon receipt of

1 the LWDA Notice, or if no LWDA Notice is provided within sixty-five  
2 (65) calendar days of the postmark date of the aggrieved employee's  
3 notice, the aggrieved employee may commence a civil action pursuant  
4 to California Labor Code section 2699 to recover civil penalties.

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

- 9 (a) The aggrieved employee or representative shall give written notice by  
10 online filing with the LWDA and by certified mail to the employer of  
11 the specific provisions of the California Labor Code alleged to have  
12 been violated (other than those listed in Section 2699.5), including the  
13 facts and theories to support the alleged violation.
- 14 (b) An aggrieved employee's notice filed with the LWDA pursuant to  
15 2699.3(c) and any employer response to that notice shall be  
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The employer may cure the alleged violation within thirty-three (33)  
18 calendar days of the postmark date of the notice sent by the aggrieved  
19 employee or representative. The employer shall give written notice  
20 within that period of time by certified mail to the aggrieved employee or  
21 representative and by online filing with the LWDA if the alleged  
22 violation is cured, including a description of actions taken, and no civil  
23 action pursuant to Section 2699 may commence. If the alleged violation  
24 is not cured within the 33-day period, the aggrieved employee may  
25 commence a civil action pursuant to Section 2699.

26 33. On March 7, 2023, Plaintiff provided written notice by online filing to the  
27 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor  
28 Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written  
2 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The  
3 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned  
4 Plaintiff PAGA Case Number LWDA-CM-940540-23. A true and correct copy of Plaintiff's  
5 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

6 34. As of the filing date of this complaint, over 65 days have passed since Plaintiff  
7 sent the notice described above to the LWDA, and the LWDA has not responded that it  
8 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

9 35. Thus, Plaintiff has satisfied the administrative prerequisites under California  
10 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for  
11 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510,  
12 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

13 36. Labor Code section 558(a) provides "[a]ny employer or other person acting on  
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
15 provision regulating hours and days of work in any order of the Industrial Welfare  
16 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty  
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
18 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each  
19 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor  
20 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition  
21 to any other civil or criminal penalty provided by law."

22 37. Defendants, at all times relevant to this complaint, were employers or persons  
23 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'  
24 rights by violating various sections of the California Labor Code as set forth above.

25 38. As set forth below, Defendants have violated numerous provisions of both the  
26 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage  
27 Order.

28 39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),

1 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a  
2 private attorney general, seeks assessment and collection of civil penalties for herself, all other  
3 aggrieved employees, and the State of California against Defendants for violations of  
4 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516,  
5 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

#### 6 **CLASS ACTION ALLEGATIONS**

7 40. Plaintiff brings this action on her own behalf, as well as on behalf of each and  
8 all other persons similarly situated, and thus seeks class certification under California Code of  
9 Civil Procedure section 382.

10 41. All claims alleged herein arise under California law for which Plaintiff seeks  
11 relief authorized by California law.

12 42. Plaintiff's proposed class consists of and is defined as follows:

13 All persons who worked for Defendants as non-exempt, hourly  
14 paid employees in California, at any time from July 1, 2020, until  
the date of trial ("Class").

15 43. Plaintiff's proposed subclass consists of and is defined as follows:

16 All persons who worked for Defendants as non-exempt, hourly  
17 paid employees in California and who received at least one wage  
18 statement within one (1) year prior to the filing of the initial  
complaint until the date of trial ("Subclass").

19 44. Members of the Class and Subclass are referred to herein as "class members."

20 45. Plaintiff reserves the right to redefine the Class and Subclass and to add  
21 additional subclasses as appropriate based on further investigation, discovery, and specific  
22 theories of liability.

23 46. There are common questions of law and fact as to class members that  
24 predominate over questions affecting only individual members, including, but not limited to:

- 25 (a) Whether Defendants required Plaintiff and class members to work over  
26 eight (8) hours per day, over twelve (12) hours per day, or over forty  
27 (40) hours per week and failed to pay all legally required overtime  
28 compensation to Plaintiff and class members;

- (b) Whether Defendants failed to include all forms of remuneration in the “regular rate” of pay as required by law for purposes of paying overtime wages and/or rest period premiums to Plaintiff and class members;
- (c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (d) Whether Defendants failed to provide Plaintiff and/or class members meal periods;
- (e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, rest period premiums and/or sick leave pay due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed to timely pay overtime wages, minimum wages, rest period premiums and/or sick leave pay to Plaintiff and class members during their employment;
- (j) Whether Defendants failed to properly calculate the “regular rate” of pay upon which Plaintiff’s and class members’ sick leave rate of pay was based;
- (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants’ violations of California law.

1           47.     There is a well-defined community of interest in the litigation and the class  
2 members are readily ascertainable:

- 3           (a)     Numerosity: The class members are so numerous that joinder of all  
4 members would be unfeasible and impractical. The membership of the  
5 entire class is unknown to Plaintiff at this time; however, the class is  
6 estimated to be greater than one hundred (100) individuals and the  
7 identity of such membership is readily ascertainable by inspection of  
8 Defendants' employment records.
- 9           (b)     Typicality: Plaintiff is qualified to, and will, fairly and adequately  
10 protect the interests of each class member with whom she has a well-  
11 defined community of interest, and Plaintiff's claims (or defenses, if  
12 any) are typical of all class members as demonstrated herein.
- 13           (c)     Adequacy: Plaintiff is qualified to, and will, fairly and adequately  
14 protect the interests of each class member with whom she has a well-  
15 defined community of interest and typicality of claims, as demonstrated  
16 herein. Plaintiff acknowledges that she has an obligation to make  
17 known to the Court any relationship, conflicts or differences with any  
18 class member. Plaintiff's attorneys, the proposed class counsel, are  
19 versed in the rules governing class action discovery, certification, and  
20 settlement. Plaintiff has incurred, and throughout the duration of this  
21 action, will continue to incur costs and attorneys' fees that have been,  
22 are, and will be necessarily expended for the prosecution of this action  
23 for the substantial benefit of each class member.
- 24           (d)     Superiority: The nature of this action makes the use of class action  
25 adjudication superior to other methods. A class action will achieve  
26 economies of time, effort, and expense as compared with separate  
27 lawsuits, and will avoid inconsistent outcomes because the same issues  
28 can be adjudicated in the same manner and at the same time for the

entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

### **FIRST CAUSE OF ACTION**

#### **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)**

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

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

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

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

1 workweek.

2 52. The applicable IWC Wage Order further provides that Defendants are and were  
3 required to pay Plaintiff and class members working more than twelve (12) hours in a day,  
4 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's  
5 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the  
6 employee, including shift differential pay, nondiscretionary bonuses and incentive pay.

7 53. California Labor Code section 510 codifies the right to overtime compensation  
8 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)  
9 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the  
10 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate  
11 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours  
12 in a day on the seventh (7th) day of work.

13 54. During the relevant time period, Defendants willfully failed to pay all overtime  
14 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and  
15 class members were not paid overtime premiums for all of the hours they worked in excess of  
16 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)  
17 hours in a week, because all hours worked were not recorded.

18 55. During the relevant period, Defendants implemented, on a company-wide basis,  
19 an employer-imposed requirement that Plaintiff and class members undergo mandatory  
20 COVID-19 temperature checks and/or health screenings before clocking in for their scheduled  
21 shifts. For example, Plaintiff was required to spend approximately 3-4 minutes before every  
22 shift undergoing a temperature check and logging the result before being permitted to clock in  
23 for her shift. As a further example, once per week, Plaintiff was required to spend  
24 approximately 15 minutes off-the-clock taking an on-site COVID-19 swab test. Even though  
25 Defendants required these temperature checks and/or health screenings, Defendants did not  
26 provide Plaintiff and class members a mechanism to record this time worked so they could be  
27 compensated for the time spent undergoing mandatory temperature checks and/or health  
28 screenings.

1           56. Defendants knew or should have known that as a result of these company-wide  
2 practices and/or policies, Plaintiff and class members were performing their assigned duties  
3 off-the-clock before their shifts, and were suffered or permitted to perform work for which  
4 they were not paid. Because Plaintiff and class members sometimes worked shifts of eight (8)  
5 hours a day or more or forty (40) hours a week or more, some of this off-the-clock work  
6 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid  
7 overtime wages for all of the overtime hours they actually worked.

8           57. Moreover, in addition to an hourly wage, Defendants paid Plaintiff and class  
9 members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.  
10 However, in violation of the California Labor Code, Defendants failed to incorporate all  
11 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of  
12 remuneration, into the calculation of the regular rate of pay for purposes of calculating the  
13 overtime wage rate. Therefore, during times when Plaintiff and class members worked  
14 overtime and received these other forms of pay, Defendants failed to pay all overtime wages  
15 by paying a lower overtime rate than required.

16           58. For example, Defendants paid Plaintiff and class members nondiscretionary  
17 bonuses which were listed on Plaintiff's and class members' wage statements as "Hrly  
18 Bonus." During pay periods that Plaintiff and class members were paid overtime wages,  
19 Defendants did not incorporate the nondiscretionary bonuses into Plaintiff's and class  
20 members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for  
21 overtime hours worked. Specifically, Defendants paid Plaintiff and class members 1.5 times  
22 their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to  
23 properly calculate the overtime rates of pay based on all remuneration paid has resulted in an  
24 underpayment of overtime wages to Plaintiff and class members on a company-wide basis.

25           59. Defendants' failure to pay Plaintiff and class members the balance of overtime  
26 compensation as required by California law, violates the provisions of California Labor Code  
27 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class  
28 members are entitled to recover from Defendants their unpaid overtime compensation, as well

as interest, costs, and attorneys' fees.

## **SECOND CAUSE OF ACTION**

### **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)**

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

61. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11010(2)(G) (defining "Hours Worked").

62. As set forth above, during the relevant time period, Defendants had a company-wide policy and/or practice requiring Plaintiff and class members to perform various work-related tasks while off-the-clock before their shifts, including submitting to off-the-clock temperature checks and/or health screenings. Defendants failed to track this time Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

63. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

64. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from

Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

### THIRD CAUSE OF ACTION

#### **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)**

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

66. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and class members’ employment by Defendants.

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

68. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

69. During the relevant time period, Defendants regularly failed to authorize and

1 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour  
2 period worked or major fraction thereof. Defendants had, and continue to have, a company-  
3 wide policy and/or practice of understaffing while assigning heavy workloads, which resulted  
4 in a lack of rest period coverage because there were too few employees on duty to handle the  
5 heavy workloads and provide rest period coverage. Moreover, Defendants had a company-  
6 wide practice of failing to schedule rest periods, which further led to Plaintiff and class not  
7 being authorized and permitted to take rest periods.

8 70. Furthermore, upon information and belief, during the relevant time period,  
9 Defendants maintained and implemented a company-wide on-premises rest period policy,  
10 which effectively required that Plaintiff and class members remain on the work premises  
11 during their rest periods. Because Plaintiff and class members were restricted from leaving  
12 the premises during rest periods, they were denied the ability to use their rest periods freely  
13 for their own purposes, such as running personal errands. Thus, Defendants effectively  
14 maintained control over Plaintiff and class members during rest periods.

15 71. As a result of Defendants' practices and policies, Plaintiff and class members  
16 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without  
17 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,  
18 Plaintiff had to forego a rest period about 3-4 times per week due to understaffing and  
19 pressure to complete shipments according to management's specifications.

20 72. Defendants have also engaged in a systematic, company-wide practice and/or  
21 policy of not paying rest period premiums owed when rest periods are not authorized and  
22 permitted. As a result of this practice and/or policy, Plaintiff and class members have not  
23 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants  
24 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest  
25 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for  
26 premiums because Defendants failed to include all forms of compensation, such as incentive  
27 pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.  
28 As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them

1 rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the  
2 applicable IWC Wage Order.

3 73. Defendants' conduct violates the applicable IWC Wage Order and California  
4 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled  
5 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of  
6 compensation for each work day that a compliant rest period was not authorized and  
7 permitted.

#### 8 **FOURTH CAUSE OF ACTION**

#### 9 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 10 **Statements and Failure to Maintain Accurate Payroll Records** 11 **(Against all Defendants)**

12 74. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
13 and every allegation set forth above.

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

19 76. At all relevant times, Defendants have knowingly and intentionally provided  
20 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.  
21 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members  
22 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all  
23 applicable hourly rates in effect during the pay period, including rates of pay for overtime  
24 wages, rest period premiums, and/or paid sick leave, and the corresponding number of hours  
25 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),  
26 226(a)(5), and 226(a)(9).

27 77. Because Defendants did not accurately record the time Plaintiff and Subclass  
28 members spent working off-the-clock, Defendants did not list the correct amount of gross

1 wages and net wages earned by Plaintiff and Subclass members in compliance with sections  
2 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total  
3 number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2),  
4 and failed to list the applicable hourly rates of pay in effect during the pay period and  
5 corresponding accurate number of work hours worked at each hourly rate in violation of  
6 section 226(a)(9).

7 78. Additionally, because Defendants did not calculate Plaintiff's and Subclass  
8 members' regular rate of pay correctly for purposes of paying overtime wages, rest period  
9 premiums, and/or paid sick leave, Defendants did not list the correct amount of gross wages in  
10 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct  
11 amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list  
12 all applicable hourly rates in effect during the pay period, namely, correct rates of pay for  
13 overtime wages, rest period premiums, and/or paid sick leave in violation of section 226(a)(9).

14 79. The wage statement deficiencies also include, without limitation, failing to list  
15 the number of piece-rate units earned and any applicable piece rate if the employee is paid on  
16 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and  
17 only the last four digits of his or her social security number or an employee identification  
18 number other than a social security number; failing to list the inclusive dates of the period for  
19 which employees were paid; failing to list the name and address of the legal entity that is the  
20 employer; and/or failing to state all hours worked as a result of not recording or stating hours  
21 worked off-the-clock.

22 80. California Labor Code section 1174(d) provides that "[e]very person employing  
23 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees  
24 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the  
25 plants or establishments at which employees are employed, payroll records showing the hours  
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
27 applicable piece rate paid to, employees employed at the respective plants or  
28 establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d),

Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

81. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and stop times for Plaintiff and Subclass members, in violation of section 1198.

82. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

## **FIFTH CAUSE OF ACTION**

### **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)**

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

84. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, rest period premiums, and/or sick leave pay that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

85. At all times relevant herein set forth, Labor Code sections 201 and 202 provide

1 that if an employer discharges an employee, the wages earned and unpaid at the time of  
2 discharge are due and payable immediately, and that if an employee voluntarily leaves his or  
3 her employment, his or her wages shall become due and payable not later than seventy-two  
4 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of  
5 his or her intention to quit, in which case the employee is entitled to his or her wages at the  
6 time of quitting.

7 86. Defendants willfully failed to pay Plaintiff and class members who are no  
8 longer employed by Defendants the earned and unpaid wages set forth above, including but  
9 not limited to, overtime wages, minimum wages, rest period premiums, and/or sick leave pay,  
10 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'  
11 employ.

12 87. Defendants' failure to pay Plaintiff and class members who are no longer  
13 employed by Defendants their wages earned and unpaid at the time of discharge, or within  
14 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201  
15 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the  
16 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a  
17 thirty (30) day maximum pursuant to California Labor Code section 203.

## 18 **SIXTH CAUSE OF ACTION**

### 19 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**

#### 20 **Employment**

#### 21 **(Against all Defendants)**

22 88. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
23 and every allegation set forth above.

24 89. This cause of action is dependent upon, and wholly derivative of, the overtime  
25 wages, minimum wages, rest period premiums, and/or sick leave pay that were not timely paid  
26 to Plaintiff and class members during their employment.

27 90. At all times relevant herein set forth, Labor Code section 204 provides that all  
28 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)

1 days, inclusive, of any calendar month, other than those wages due upon termination of an  
2 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of  
3 the month during which the labor was performed. Labor Code section 204 further provides  
4 that all wages earned by any person in any employment between the sixteenth (16th) and the  
5 last day, inclusive, of any calendar month, other than those wages due upon termination of an  
6 employee, are due and payable between the first (1st) and the tenth (10th) day of the following  
7 month.

8 91. At all times relevant herein, Labor Code section 204 provides that all wages  
9 earned for labor in excess of the normal work period shall be paid no later than the payday for  
10 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section  
11 204 provides that the requirements of this section are deemed satisfied by the payment of  
12 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than  
13 seven (7) calendar days following the close of the payroll period.

14 92. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
15 class members all wages due including, but not limited to, overtime wages, minimum wages,  
16 rest period premiums, and/or sick leave pay, within the time periods specified by California  
17 Labor Code section 204.

18 93. Defendants' failure to pay Plaintiff and class members all wages due violates  
19 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from  
20 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

## 21 SEVENTH CAUSE OF ACTION

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

#### 23 (Against all Defendants)

24 94. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
25 and every allegation set forth above.

26 95. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover  
27 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code  
28 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,

1 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits  
2 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those  
3 Labor Code sections not found in section 2699.5, including sections 246, 248.6, 516, and  
4 1182.12.

5 96. Defendants' conduct, as alleged herein, violates numerous sections of the  
6 California Labor Code, including, but not limited to, the following:

- 7 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC  
8 Wage Order for Defendants' failure to compensate Plaintiff and other  
9 aggrieved employees with all required overtime pay, as alleged herein;
- 10 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the  
11 applicable IWC Wage Order for Defendants' failure to include all forms  
12 of remuneration in the "regular rate" of pay as required by law for  
13 purposes of paying overtime wages and/or meal and rest period  
14 premiums, to Plaintiff and/or other aggrieved employees, as alleged  
15 herein and set forth below;
- 16 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
17 1198, and the applicable IWC Wage Order for Defendants' failure to  
18 compensate Plaintiff and other aggrieved employees with at least  
19 minimum wages for all hours worked, as alleged herein;
- 20 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the  
21 applicable IWC Wage Order for Defendants' failure to provide other  
22 aggrieved employees with meal periods, as set forth below;
- 23 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the  
24 applicable IWC Wage Order for Defendants' failure to authorize and  
25 permit Plaintiff and other aggrieved employees to take rest periods, as  
26 alleged herein;
- 27 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable  
28 IWC Wage Order for failure to provide accurate and complete wage

- 1 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 2 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
- 3 IWC Wage Order for failure to maintain payroll records, as alleged
- 4 herein;
- 5 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
- 6 earned wages upon termination, as alleged herein;
- 7 (i) Violation of Labor Code section 204 for failure to pay all earned wages
- 8 during employment, as alleged herein; and
- 9 (j) Violation of Labor Code sections 246(l) and 248.6(b)(3)(A), for failure
- 10 to properly calculate the sick leave rate paid to Plaintiff and other
- 11 aggrieved employees, as set forth below.

12 97. At all relevant times herein set forth, the applicable IWC Wage Order and

13 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to other

14 aggrieved employees' employment by Defendants.

15 98. At all relevant times herein set forth, California Labor Code section 512(a)

16 provides that an employer may not require, cause, or permit an employee to work for a period

17 of more than five (5) hours per day without providing the employee with a meal period of not

18 less than thirty (30) minutes, except that if the total work period per day of the employee is

19 not more than six (6) hours, the meal period may be waived by mutual consent of both the

20 employer and the employee. Under California law, first meal periods must start after no more

21 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

22 99. At all relevant times herein set forth, California Labor Code sections 226.7,

23 512(a), 516, and 1198 provide that no employer shall require an employee to work during any

24 meal period mandated by an applicable order of the IWC.

25 100. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,

26 and the applicable IWC Wage Order also require employers to provide a second meal period

27 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay

28 an employee one (1) additional hour of pay at the employee's regular rate, except that if the

1 total hours worked is no more than twelve (12) hours, the second meal period may be waived  
2 by mutual consent of the employer and the employee only if the first meal period was not  
3 waived.

4 101. Defendants had, and continue to have, a company-wide policy and/or practice  
5 of understaffing while assigning heavy workloads, resulting in a failure to provide other  
6 aggrieved employees with adequate meal period coverage. As a result, other aggrieved  
7 employees were not always afforded timely, uninterrupted 30-minute meal periods during  
8 shifts when they were entitled to receive a meal period. Defendants also had a company-wide  
9 policy and/or practice of failing to schedule meal periods, which further caused other  
10 aggrieved employees to not be relieved of their duties for compliant meal periods.  
11 Consequently, other aggrieved employees missed meal periods, had meal periods interrupted,  
12 and/or had to wait extended periods of time before taking meal periods. Additionally,  
13 Defendants did not provide other aggrieved employees with second 30-minute meal periods  
14 on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees  
15 did not sign valid meal period waivers on days that they were entitled to meal periods and  
16 were not relieved of all duties.

17 102. At all times mentioned herein, Defendants knew or should have known that as a  
18 result of their policies, other aggrieved employees were not actually relieved of all duties to  
19 take timely, uninterrupted meal periods. Defendants further knew or should have known that  
20 they did not pay other aggrieved employees meal period premiums when meal periods were  
21 late, interrupted, shortened, and/or missed.

22 103. Furthermore, Defendants engaged in a company-wide practice and/or policy of  
23 not paying all meal period premiums owed when compliant meal periods are not provided.  
24 Because of this practice and/or policy, other aggrieved employees have not received premium  
25 pay for missed, late, and interrupted meal periods. Alternatively, on information and belief, to  
26 the extent that Defendants did pay other aggrieved employees premium pay for missed, late,  
27 and interrupted meal periods, Defendants did not pay other aggrieved employees at the correct  
28 rate of pay for premiums because Defendants systematically failed to include all forms of

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

3 104. Defendants' conduct violates the applicable IWC Wage Order, and California  
4 Labor Code sections 226.7, 512(a), 516, and 1198. Other aggrieved employees are therefore  
5 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and  
6 (g).

7 105. Moreover, Defendants knew or should have known that as a result of these  
8 company-wide practices and/or policies, other aggrieved employees were working off-the-  
9 clock during their meal periods, and were suffered or permitted to perform work for which  
10 they were not paid. Defendants' failure to compensate other aggrieved employees at least  
11 minimum wages for all hours worked off-the-clock, as alleged herein, in violation of  
12 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable  
13 IWC Wage Order. To the extent that these off-the-clock hours qualified for overtime  
14 premium payment, Defendants failed to pay other aggrieved employees the balance of  
15 overtime compensation in violation of California Labor Code sections 510 and 1198. Other  
16 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code  
17 sections 2699(a), (f), and (g).

18 106. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,  
19 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more  
20 days from the commencement of employment with paid sick days, to be accrued at least one  
21 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),  
22 employers must provide no less than 24 hours or three (3) days of paid sick leave (or  
23 equivalent paid leave or paid time off) in each year of the employee's employment. Further,  
24 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using  
25 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in  
26 the same manner as the regular rate of pay for the workweek in which the employee uses paid  
27 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)  
28 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's

1 total wages, not including overtime premium pay, by the employee's total hours worked in the  
2 full pay periods of the prior 90 days of employment."

3 107. At all relevant times herein, California Labor Code sections 248.2 and 248.6  
4 provide covered employees with COVID-19 supplemental paid sick leave. California Labor  
5 Code section 248.6(b)(3)(A), provides that each hour of COVID-19 supplemental paid sick  
6 leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same  
7 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,  
8 whether or not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated  
9 by dividing the employee's total wages, not including overtime premium pay, by the  
10 employee's total nonovertime hours worked in the full pay periods occurring within the prior  
11 90 days of employment; provided that, for nonexempt employees paid by piece rate,  
12 commission or other method that uses all hours to determine the regular rate of pay, total  
13 wages, not including overtime premium pay, shall be divided by all hours, to determine the  
14 correct amount of COVID-19 supplemental paid sick leave under this subdivision."

15 108. During the relevant time period, on information and belief, Defendants did not  
16 pay Plaintiff and other aggrieved employees the correct sick leave rates of pay. In addition to  
17 an hourly wage, Defendants paid Plaintiff and other aggrieved employees incentive pay,  
18 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the  
19 California Labor Code, Defendants failed to incorporate all remunerations, including incentive  
20 pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for  
21 purposes of calculating the sick leave rate. Therefore, during times when Plaintiff and other  
22 aggrieved employees took sick leave and received these other forms of pay, Defendants failed  
23 to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically,  
24 Defendants paid Plaintiff and other aggrieved employees sick leave based on their hourly rate  
25 of pay instead of their regular rate of pay.

26 109. Defendants' failure to properly calculate the sick leave rates of pay based on all  
27 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other  
28 aggrieved employees on a company-wide basis in violation of Labor Code 246(l) and

1 248.6(b)(3)(A). Plaintiff and other aggrieved employees are therefore entitled to recover civil  
2 penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

3 **EIGHTH CAUSE OF ACTION**

4 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

5 **Unlawful Business Practices**

6 **(Against all Defendants)**

7 110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
8 and every allegation set forth above.

9 111. Defendants are “persons” as defined by California Business & Professions  
10 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,  
11 and/or associations.

12 112. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,  
13 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has  
14 suffered injury in fact and has lost money as a result of Defendants’ unlawful business  
15 practices. Plaintiff seeks to enforce important rights affecting the public interest within the  
16 meaning of Code of Civil Procedure section 1021.5.

17 113. Defendants’ activities, as alleged herein, are violations of California law, and  
18 constitute unlawful business acts and practices in violation of California Business &  
19 Professions Code sections 17200, *et seq.*

20 114. A violation of California Business & Professions Code sections 17200, *et seq.*  
21 may be predicated on the violation of any state or federal law. In the instant case, Defendants’  
22 policies and practices have violated state law in at least the following respects:

- 23 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and  
24 class members, to work overtime without paying them proper  
25 compensation in violation of California Labor Code sections 510 and  
26 1198, and the applicable IWC Wage Order, as alleged herein;
- 27 (b) Failing to include all forms of remuneration in the “regular rate” of pay  
28 as required by law for purposes of paying overtime wages and/or rest

1 period premiums to Plaintiff and class members, in violation of  
2 California Labor Code sections 226.7, 510, and 1198, and the applicable  
3 IWC Wage Order, as alleged herein;

4 (c) Failing to pay at least minimum wage to Plaintiff and class members in  
5 violation of California Labor Code sections 1182.12, 1194, 1197,  
6 1197.1, and 1198, and the applicable IWC Wage Order, as alleged  
7 herein;

8 (d) Failing to authorize and permit Plaintiff and class members to take  
9 uninterrupted rest periods in violation of California Labor Code sections  
10 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged  
11 herein;

12 (e) Failing to provide Plaintiff and class members with accurate wage  
13 statements and failing to maintain accurate payroll records in violation  
14 of California Labor Code sections 226(a), 1174(d), and 1198, and the  
15 applicable IWC Wage Order, as alleged herein;

16 (f) Failing timely to pay all earned wages to Plaintiff and class members in  
17 violation of California Labor Code section 204, as alleged herein; and

18 (g) Failing to properly calculate the sick leave paid to Plaintiff and class  
19 members in violation of Labor Code sections 246(l) and 248.6(b)(3)(A),  
20 as set forth below.

21 115. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,  
22 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more  
23 days from the commencement of employment with paid sick days, to be accrued at least one  
24 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),  
25 employers must provide no less than 24 hours or three (3) days of paid sick leave (or  
26 equivalent paid leave or paid time off) in each year of the employee's employment. Further,  
27 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using  
28 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in

1 the same manner as the regular rate of pay for the workweek in which the employee uses paid  
2 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)  
3 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's  
4 total wages, not including overtime premium pay, by the employee's total hours worked in the  
5 full pay periods of the prior 90 days of employment."

6 116. At all relevant times herein, California Labor Code sections 248.2 and 248.6  
7 provide covered employees with COVID-19 supplemental paid sick leave. California Labor  
8 Code section 248.6(b)(3)(A), provides that each hour of COVID-19 supplemental paid sick  
9 leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same  
10 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,  
11 whether or not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated  
12 by dividing the employee's total wages, not including overtime premium pay, by the  
13 employee's total nonovertime hours worked in the full pay periods occurring within the prior  
14 90 days of employment; provided that, for nonexempt employees paid by piece rate,  
15 commission or other method that uses all hours to determine the regular rate of pay, total  
16 wages, not including overtime premium pay, shall be divided by all hours, to determine the  
17 correct amount of COVID-19 supplemental paid sick leave under this subdivision."

18 117. During the relevant time period, on information and belief, Defendants did not  
19 pay Plaintiff and class members the correct sick leave rates of pay. In addition to an hourly  
20 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,  
21 and/or other forms of remuneration. However, in violation of the California Labor Code,  
22 Defendants failed to incorporate all remunerations, including incentive pay and/or  
23 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of  
24 calculating the sick leave rate. Therefore, during times when Plaintiff and class members took  
25 sick leave and received these other forms of pay, Defendants failed to pay all sick leave  
26 benefits by paying a lower sick leave rate than required. Specifically, Defendants paid  
27 Plaintiff and class members sick leave based on their hourly rate of pay instead of their regular  
28 rate of pay.

118. Defendants' failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class members on a company-wide basis in violation of Labor Code sections 246(l) and 248.6(b)(3)(A).

119. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

120. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

#### **NINTH CAUSE OF ACTION**

#### **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

#### **Unfair Business Practices**

#### **(Against all Defendants)**

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

122. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

123. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

124. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

125. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s rest period laws and constitute acts against the public policy behind these laws.

126. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

### **REQUEST FOR JURY TRIAL**

Plaintiff requests a trial by jury.

### **PRAYER FOR RELIEF**

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in

1 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff  
2 reserves the right to amend her prayer for relief to seek a different amount.

3 **Class Certification**

4 2. That this case be certified as a class action;

5 3. That Plaintiff be appointed as the representative of the Class and Subclass;

6 4. That counsel for Plaintiff be appointed as class counsel.

7 **As to the First Cause of Action**

8 5. That the Court declare, adjudge, and decree that Defendants violated California  
9 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to  
10 pay all overtime wages due to Plaintiff and class members;

11 6. For general unpaid wages at overtime wage rates and such general and special  
12 damages as may be appropriate;

13 7. For pre-judgment interest on any unpaid overtime compensation commencing  
14 from the date such amounts were due, or as otherwise provided by law;

15 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
16 California Labor Code section 1194(a); and

17 9. For such other and further relief as the Court may deem equitable and  
18 appropriate.

19 **As to the Second Cause of Action**

20 10. That the Court declare, adjudge and decree that Defendants violated California  
21 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage  
22 Order by willfully failing to pay minimum wages to Plaintiff and class members;

23 11. For general unpaid wages and such general and special damages as may be  
24 appropriate;

25 12. For pre-judgment interest on any unpaid compensation from the date such  
26 amounts were due, or as otherwise provided by law;

27 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
28 California Labor Code section 1194(a);

- 1           14.     For liquidated damages pursuant to California Labor Code section 1194.2; and  
2           15.     For such other and further relief as the Court may deem equitable and  
3 appropriate.

4                           **As to the Third Cause of Action**

5           16.     That the Court declare, adjudge and decree that Defendants violated California  
6 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully  
7 failing to authorize and permit Plaintiff and class members to take all rest periods;

8           17.     That the Court make an award to the Plaintiff and class members of one (1) hour  
9 of pay at each employee's regular rate of pay for each workday that a rest period was not  
10 authorized and permitted;

11          18.     For all actual, consequential, and incidental losses and damages, according to  
12 proof;

13          19.     For premiums pursuant to California Labor Code section 226.7(c);

14          20.     For pre-judgment interest on any unpaid rest period premiums from the date  
15 such amounts were due, or as otherwise provided by law;

16          21.     For attorneys' fees pursuant to California Code of Civil Procedure section  
17 1021.5, or as otherwise provided by law; and

18          22.     For such other and further relief as the Court may deem equitable and  
19 appropriate.

20                           **As to the Fourth Cause of Action**

21          23.     That the Court declare, adjudge and decree that Defendants violated the  
22 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC  
23 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate  
24 itemized wage statements thereto;

25          24.     For all actual, consequential, and incidental losses and damages, according to  
26 proof;

27          25.     For injunctive relief pursuant to California Labor Code section 226(h);

28          26.     For statutory penalties pursuant to California Labor Code section 226(e);

1           27.     For attorneys' fees and costs pursuant to California Labor Code section  
2 226(e)(1); and

3           28.     For such other and further relief as the Court may deem equitable and  
4 appropriate.

5                           **As to the Fifth Cause of Action**

6           29.     That the Court declare, adjudge and decree that Defendants violated California  
7 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,  
8 rest period premiums, and/or sick leave pay owed at the time of termination of the  
9 employment of Plaintiff and other terminated class members;

10          30.     For all actual, consequential and incidental losses and damages, according to  
11 proof;

12          31.     For waiting time penalties according to proof pursuant to California Labor  
13 Code section 203 for all employees who have left Defendants' employ;

14          32.     For pre-judgment interest on any unpaid wages from the date such amounts  
15 were due, or as otherwise provided by law;

16          33.     For attorneys' fees pursuant to California Code of Civil Procedure section  
17 1021.5, or as otherwise provided by law; and

18          34.     For such other and further relief as the Court may deem equitable and  
19 appropriate.

20                           **As to the Sixth Cause of Action**

21          35.     That the Court declare, adjudge and decree that Defendants violated California  
22 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members  
23 overtime wages, minimum wages, rest period premiums, and/or sick leave pay during their  
24 employment;

25          36.     For all actual, consequential and incidental losses and damages, according to  
26 proof;

27          37.     For statutory penalties according to proof pursuant to California Labor Code  
28 section 210;

38. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

39. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

40. For such other and further relief as the Court may deem equitable and appropriate.

### As to the Seventh Cause of Action

41. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the “regular rate” of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); and 246 and 248 (by failing to properly calculate sick leave pay);

42. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

43. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

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

45. For such other and further relief as the Court may deem equitable and

appropriate.

**As to the Eighth Cause of Action**

46. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the "regular rate" of pay for purposes of paying overtime and/or rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, and failing to properly calculate Plaintiff's and class members' sick leave pay, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

47. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

48. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

49. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

50. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Ninth Cause of Action**

51. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

1           52.     For restitution of the statutory benefits under section 226.7 unfairly withheld  
2 from Plaintiff and class members and prejudgment interest from the day such amounts were  
3 due and payable;

4           53.     For the appointment of a receiver to receive, manage and distribute any and all  
5 funds disgorged from Defendants and determined to have been wrongfully acquired by  
6 Defendants as a result of violations of California Business & Professions Code sections  
7 17200, *et seq.*;

8           54.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
9 California Code of Civil Procedure section 1021.5;

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

11          56.     For such other and further relief as the Court may deem equitable and  
12 appropriate.  
13

14 Dated: May 16, 2023

Respectfully submitted,

Capstone Law APC

16  
17 By: \_\_\_\_\_



18 Robert Drexler  
19 Molly DeSario  
Jonathan Lee

20 Attorneys for Plaintiff Jessica Penetrante  
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**EXHIBIT “1”**



1875 Century Park East, Suite 1000  
Los Angeles, California 90067  
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO  
310.712.8169 Direct  
Anthony.Castillo@capstonelawyers.com

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March 7, 2023

VIA ONLINE SUBMISSION

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

Subject: *Jessica Penetrante v. Presidio Components, Inc.*

Dear PAGA Administrator:

This office represents Jessica Penetrante in connection with her claims under the California Labor Code. Ms. Penetrante was an employee of PRESIDIO COMPONENTS, INC. ("PRESIDIO").

The employer may be contacted directly at the address below:

PRESIDIO COMPONENTS, INC.  
7169 CONSTRUCTION COURT  
SAN DIEGO, CA 92121

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

PRESIDIO employed Ms. Penetrante as an hourly paid, non-exempt employee from approximately May 2020 to September 2022. Ms. Penetrante worked as a Quality Control Technician at PRESIDIO's location in San Diego, California. Ms. Penetrante typically worked eight (8) hours or more per day, and five (5) to six (6) days per week. At the time her employment ended, Ms. Penetrante was compensated approximately \$19.00 per hour. Her primary job duties included, without limitation, monitoring and analyzing the quality of capacitor parts.

PRESIDIO committed one or more of the following Labor Code violations against Ms. Penetrante, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):<sup>1</sup>

**PRESIDIO’s Company-Wide and Uniform Payroll and HR Practices**

PRESIDIO COMPONENTS, INC. is a California corporation and manufactures commercial ceramic, military, space, high temperature, pulse energy, and microwave capacitors used in a variety of commercial, military, and high reliability space applications. Upon information and belief, PRESIDIO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid employees working for PRESIDIO in California, including Ms. Penetrante and other aggrieved employees. At all relevant times, PRESIDIO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Penetrante and other aggrieved employees, regardless of their location or position.

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

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

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

PRESIDIO willfully failed to pay all overtime wages owed to Ms. Penetrante and other aggrieved employees. During the relevant time period, Ms. Penetrante and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

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

excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant period, PRESIDIO implemented, on a company-wide basis, an employer-imposed requirement that Ms. Penetrante and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. For example, Ms. Penetrante was required to spend approximately 3-4 minutes before every shift undergoing a temperature check and logging the result before being permitted to clock in for her shift. As a further example, once per week, Ms. Penetrante was required to spend approximately 15 minutes off-the-clock taking an on-site COVID-19 swab test. Even though PRESIDIO required these temperature checks and/or health screenings, PRESIDIO did not provide Ms. Penetrante and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Moreover, PRESIDIO had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, resulting in a failure to provide other aggrieved employees with adequate meal period coverage. As a result, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. PRESIDIO also had a company-wide policy and/or practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, other aggrieved employees missed meal periods and/or had meal periods interrupted in order to attend to their work duties. PRESIDIO did not compensate other aggrieved employees for the time they spent working off the clock during meal periods.

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

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

For example, PRESIDIO paid Ms. Penetrante and other aggrieved employees nondiscretionary bonuses which were listed on Ms. Penetrante's and other aggrieved employees' wage statements as "Hrly Bonus." During pay periods that Ms. Penetrante and other aggrieved employees were paid overtime wages, PRESIDIO did not incorporate the nondiscretionary bonuses into Ms. Penetrante's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, PRESIDIO paid Ms. Penetrante and other

aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. PRESIDIO's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Penetrante and other aggrieved employees on a company-wide basis.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, PRESIDIO had a company-wide policy and/or practice requiring Ms. Penetrante and other aggrieved employees to perform various work-related tasks while off-the-clock before their shifts, including submitting to off-the-clock temperature checks and/or health screenings. PRESIDIO failed to track this time Ms. Penetrante and other aggrieved employees spent working off-the-clock, and Ms. Penetrante and other aggrieved employees received no compensation for this time.

In addition, as stated, due to PRESIDIO's uniform policies and/or practices of understaffing, assigning heavy workloads, failing to schedule meal periods, and resultant lack of meal period coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. As a result, other aggrieved employees were not relieved of all duties during unpaid meal periods and continued to work, time for which they were not compensated.

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without

providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, PRESIDIO had, and continues to have, a company-wide policy and/or practice of understaffing locations, which, combined with the assignment of heavy workloads and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. Additionally, PRESIDIO did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. Other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, PRESIDIO knew or should have known that, as a result of these policies, other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PRESIDIO further knew or should have known that it did not pay other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

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

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

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any

rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, PRESIDIO regularly failed to authorize and permit Ms. Penetrante and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. PRESIDIO had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, which resulted in a lack of rest period coverage because there were too few employees on duty to handle the heavy workloads and provide rest period coverage. Moreover, PRESIDIO had a company-wide practice of failing to schedule rest periods, which further led to Ms. Penetrante and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of PRESIDIO’s practices and policies, Ms. Penetrante and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Penetrante had to forego a rest period about 3-4 times per week due to understaffing and pressure to complete shipments according to management’s specifications.

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

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

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

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

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

Because PRESIDIO did not record the time Ms. Penetrante and other aggrieved employees spent working off-the-clock, PRESIDIO did not list the correct amount of gross wages and net wages earned by Ms. Penetrante and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PRESIDIO failed to accurately list the total number of hours worked by Ms. Penetrante and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

In addition, because PRESIDIO did not calculate Ms. Penetrante's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and/or rest period premiums, and/or paid sick leave, PRESIDIO did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, PRESIDIO failed to list the correct amount of net wages in violation of section 226(a)(5). PRESIDIO also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and/or rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), PRESIDIO willfully failed to maintain accurate payroll records for Ms. Penetrante and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

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

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

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

During the relevant time period, PRESIDIO willfully failed to pay Ms. Penetrante and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and/or rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

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

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

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

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

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

**Violation of California Labor Code §§ 246, 248.2, and 248.6 – Failure to Properly Calculate Paid Sick Leave**

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

At all relevant times herein, California Labor Code sections 248.2 and 248.6 provide covered employees with COVID-19 supplemental paid sick leave. California Labor Code section 248.6(b)(3)(A), provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt

employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

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

PRESIDIO’s failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Penetrante and other aggrieved employees on a company-wide basis in violation of Labor Code sections 246(l) and 248.6(b)(3)(A).

Ms. Penetrante and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

#### **California Labor Code § 558(a)**

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

Accordingly, Ms. Penetrante seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Penetrante, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against PRESIDIO for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.2, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

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

Best Regards,

  
Anthony Castillo

Copy: PRESIDIO COMPONENTS, INC. (via U.S. Certified Mail)

Capstone Law, APC  
1875 Century Park, East, 1000  
Los Angeles, CA. 90067



7022 2410 0000 2406 4987

PRESIDIO COMPONENTS, INC.  
7169 CONSTRUCTION COURT  
SAN DIEGO, CA 92121

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

PRESIDIO COMPONENTS, INC.  
7169 CONSTRUCTION COURT  
SAN DIEGO, CA 92121

COMPLETE THIS SECTION ON DELIVERY

A. Signature

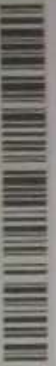
X

Received by (Printed Name)

☐ Agent  
☐ Addressee

C. Date of Delivery

1. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No



9590 9402 7690 2122 7172 28

2. Article Number (transfer from service label)

7022 2410 0000 2406 4987

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Restricted Delivery
- ☐ Priority Mail Express
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
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PS Form 3811, July 2020 PSN 7530-02-000-9033

Domestic Return Receipt

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3. Extra Services & Fees (check box and fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
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Signature

Postmark

Address

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7169 CONSTRUCTION COURT  
SAN DIEGO, CA 92121

Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

**PRESIDIO COMPONENTS, INC.**  
**7169 CONSTRUCTION COURT**  
**SAN DIEGO, CA 92121**



9590 9402 7690 2122 7172 28

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4987

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

*Ben Furr*  
B. Received by (Printed Name)

☐ Agent

☐ Addressee

C. Date of Delivery

3-16-23

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

E. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

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PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

**PROOF OF SERVICE**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **May 16, 2023**, I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

LAMBERT DEVOE  
7169 CONSTRUCTION COURT  
SAN DIEGO, CA 92121

*Agent for Defendants*  
PRESIDIO COMPONENTS, INC.

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via Case Anywhere to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 16, 2023**, at Los Angeles, California.

Sophia Flores  
\_\_\_\_\_  
Type/Print Name

  
\_\_\_\_\_  
Signature