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Attorneys for Plaintiffs DARLENE ATKINS, OLIVIA STEPHANIE AGGAS, and PHYLLIS A. PEEVY on behalf of themselves and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

DARLENE ATKINS, OLIVIA STEPHANIE
AGGAS, and PHYLLIS A. PEEVY, behalf of
themselves and current and former aggrieved
employees

Plaintiff,

vs.

EPIDAURUS dba AMITY FOUNDATION and
DOES 1 to 100, inclusive,

Defendants.

Case No.: **23STCV15168**

PAGA ACTION

**PLAINTIFF DARLENE ATKINS,
OLIVIA STEPHANIE AGGAS, and
PHYLLIS A. PEEVY'S COMPLAINT
FOR:**

**1. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiffs DARLENE ATKINS, OLIVIA STEPHANIE AGGAS, and
PHYLLIS A. PEEVY ("Plaintiff"), who alleges and complains against Defendants EPIDAURUS
dba AMITY FOUNDATION; and DOES 1 to 100, inclusive (collectively "Defendants") as
follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiffs on behalf of the State of California,
themselves and other current and former aggrieved employees of Defendants who worked as

1 hourly non-exempt employees in California during the relevant time period seeking civil penalties
2 associated with Defendants' violation of the Labor Code based on Defendants' failure to pay
3 wages for all hours worked at the employees' minimum wage rate or overtime rate, failure to pay
4 reporting time pay, failure to provide all legally required and legally compliant meal and rest
5 periods, indemnification for all necessary expenditures or losses incurred by employees in direct
6 consequence of discharging their duties; failure to timely pay earned wages during employment,
7 failure to produce requested employment records failure to provide complete and accurate wage
8 statements, failure to timely pay all unpaid wages following separation of employment. Plaintiff
9 seeks on a representative basis, following notice to the Labor and Workforce Development
10 Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and
11 costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

12 **II. JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over the claims of Plaintiffs and all other current and
14 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
15 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
16 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
17 (\$25,000); Defendants employed Plaintiffs and all other current and former aggrieved California-
18 based hourly non-exempt employees; and the injuries to Plaintiffs and all other current and former
19 aggrieved California-based hourly non-exempt employees occurred in locations throughout
20 California, including but not limited to Los Angeles County at 3750 S. Grand Ave, Los Angeles,
21 CA 90007.

22 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
23 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
24 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
25 tolled from April 6, 2020, until October 1, 2020.

26 **III. PARTIES**

27 4. Plaintiffs bring this action as a representative of the Labor and Workforce
28 Development Agency on behalf of themselves and other current and former employees subject to

1 violations of the Labor Code. The named Plaintiffs and the persons on whose behalf this action is
2 filed include current, former and/or future employees of Defendants who work, worked, or will
3 work for Defendants as direct employees as well as temporary employees employed through temp
4 agencies as hourly non-exempt employees in California.

5 5. At all times mentioned herein, Plaintiff DARLENE ATKINS is and was domiciled
6 and a resident and citizen of California and was employed by Defendants in an hourly position at
7 Defendants' location in Los Angeles from in or around April 2021 to present.

8 6. At all times mentioned herein, Plaintiff OLIVIA STEPHANIE AGGAS is and was
9 domiciled and a resident and citizen of California and was employed by Defendants in an hourly
10 position at Defendants' location in Los Angeles from in or around April 1, 2020, until on or about
11 November 2022.

12 7. At all times mentioned herein, Plaintiff PHYLLIS A. PEEVY is and was domiciled
13 and a resident and citizen of California and was employed by Defendants in an hourly position at
14 Defendants' location in Los Angeles from in or around September 28, 2021, until on or about
15 August 5, 2022.

16 8. Plaintiffs are informed and believes and thereon alleges that Defendant
17 EPIDAUROS dba AMITY FOUNDATION is authorized to do business within the State of
18 California and is doing business in the State of California and/or that Defendants DOES 1-50 are,
19 and at all times relevant hereto were persons acting on behalf of Defendant EPIDAUROS dba
20 AMITY FOUNDATION in the establishment of, or ratification of, the aforementioned illegal
21 wage and hour practices or policies. Defendant EPIDAUROS dba AMITY FOUNDATION
22 operates in Los Angeles County and employed Plaintiffs and aggrieved employees in Los Angeles
23 County, including but not limited to, at 3750 S. Grand Ave, Los Angeles, CA 90007.

24 9. Plaintiffs are informed and believes and thereon alleges that Defendants DOES 1
25 through 50 are corporations, or are other business entities or organizations of a nature unknown to
26 Plaintiffs that employed Plaintiffs and aggrieved California non-exempt employees, permitted
27 Plaintiffs and aggrieved employees to work, and exercised control over the wages, hours and
28 working conditions of employment of Plaintiffs and aggrieved employees.

1 which includes all time that an employee is under control of the employer and all time the
2 employee is suffered and permitted to work. This includes the time an employee spends, either
3 directly or indirectly, performing services which inure to the benefit of the employer.

4 17. Labor Code sections 1194 and 1197 require an employer to compensate employees
5 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
6 Wage Orders.

7 18. In this case, Plaintiffs and other current and former aggrieved California-based
8 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
9 having worked. Specifically, Defendants failed to pay Plaintiffs and other current and former
10 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
11 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
12 not limited to:

13 (a) Requiring Plaintiffs and other current and former aggrieved California-based
14 hourly non-exempt employees to participate in off-the-clock trainings at home.

15 19. Therefore, Defendants suffered, permitted, and required Plaintiffs and other current
16 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’
17 control without paying wages for that time. This resulted in Plaintiffs and other current and former
18 aggrieved California-based hourly non-exempt employees working time for which they were not
19 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
20 Wage Order.

21 20. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
22 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
23 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
24 which includes all time that an employee is under control of the employer and all time the
25 employee is suffered and permitted to work. This includes the time an employee spends, either
26 directly or indirectly, performing services that inure to the benefit of the employer.’

27 21. Labor Code sections 510 and 1194 require an employer to compensate employees a
28 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty

(40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

22. In this case, Defendants failed to pay Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees to participate in off-the-clock trainings at home.

23. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

24. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

25. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker*

1 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
2 employee for a work period of more than ten (10) hours per day without providing the employee
3 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
4 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
5 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
6 period is only permitted when: (1) the nature of the work prevents an employee from being
7 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

8 26. If an employer fails to provide an employee a meal period in accordance with the
9 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
10 for each workday that a legally required and compliant meal period was not provided. Labor Code
11 section 226.7; Wage Order 4 at §11.

12 27. In this case, Defendants failed to authorize or permit legally required and compliant
13 meal periods to Plaintiffs and other current and former aggrieved California-based hourly non-
14 exempt employees due to Defendants’ policies, practices, and/or procedures, including but not
15 limited to:

16 (a) Failing to provide Plaintiffs and other current and former aggrieved California-
17 based hourly non-exempt employees timely, uninterrupted, duty-free meal breaks of at least 30
18 minutes for every five hours worked.

19 (b) Requiring Plaintiffs and other current and former aggrieved California-based
20 hourly non-exempt employees to travel to a designated area away from their workstations during
21 their meal breaks. Defendant did not elongate or otherwise extend Plaintiffs and other current and
22 former aggrieved California-based hourly non-exempt employees meal times to account for travel
23 time between their workstations and the designated break area resulting in rest periods less than a
24 net 10-minutes.

25 (c) Requiring Plaintiffs and other current and former aggrieved California-based
26 hourly non-exempt employees to remain on the premises during their meal periods, resulting in
27 meal periods that were not duty-free.

28 28. Additionally, Plaintiffs allege that Defendants maintained a policy, practice, and/or

1 procedure of failing to compensate Plaintiffs and other current and former aggrieved California-
2 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
3 workday that Plaintiffs and other current and former aggrieved California-based hourly non-
4 exempt employees did not receive legally required and compliant meal periods, in violation of
5 Labor Code section 226.7.

6 29. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiffs
7 and other current and former aggrieved California-based hourly non-exempt employees not
8 receiving wages to compensate them for workdays during which Defendants did not provide them
9 with meal periods in compliance with California law.

10 30. **Failure to pay wages to hourly non-exempt employees for workdays that**
11 **Defendants failed to provide legally required and compliant rest periods:** Plaintiffs and other
12 current and former aggrieved California-based hourly non-exempt employees regularly worked
13 shifts of more than three-and-a-half (3.5) hours.

14 31. California law requires every employer to authorize and permit an employee a rest
15 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
16 Code section 226.7; Wage Order 4 at §12. Under California law, "[e]mployees are entitled to 10
17 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
18 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
19 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
20 section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of
21 each work period. Wage Order 4 at §12. Additionally, the rest period requirement "obligates
22 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
23 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
24 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

25 32. If the employer fails to authorize or permit a required rest period, the employer
26 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
27 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
28 Wage Order 4 at § 12.

1 33. In this case, Defendants failed to authorize or permit all legally required and
2 compliant rest periods to Plaintiffs and other current and former aggrieved California-based hourly
3 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
4 limited to:

5 (a) Requiring Plaintiffs and other current and former aggrieved California-based
6 hourly non-exempt employees to remain on the premises during their rest periods, resulting in rest
7 periods that were not duty-free.

8 (b) Failing to provide Plaintiffs and other current and former aggrieved California-
9 based hourly non-exempt employees with timely, uninterrupted, duty-free rest breaks with net ten
10 (10) minute rest breaks for every four (4) hours worked or major fraction thereof.

11 34. Additionally, Plaintiffs allege that Defendants maintained a policy, practice, and/or
12 procedure of failing to compensate Plaintiffs and other current and former aggrieved California-
13 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
14 workday they did not receive legally required and compliant rest periods, in violation of Labor
15 Code section 226.7.

16 35. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiffs
17 and other current and former aggrieved California-based hourly non-exempt employees not
18 receiving wages to compensate them for workdays in which Defendants did not provide them with
19 rest periods in compliance with California law.

20 36. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
21 **Employment:** California law requires that every employer must indemnify its employees for all
22 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
23 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
24 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
25 2802.)

26 37. Defendants have violated Labor Code Section 2802 by failing to indemnify
27 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
28 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants

employed policies, practices, and/or procedures including, but not limited to, the following:

(a) Requiring Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees to use or purchase their own tools and/or resources in order to work for Employers, including but not limited to their home internet for work-related purposes - without reimbursing employees for such use.

(b) Requiring Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees to use their personal cell telephones, including but not limited to:

- i. Clocking-in and out of shifts;
- ii. Correspond with Management; and
- iii. Receive employment-related notifications.

(c) Requiring Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees to use their personal vehicle to travel between job sites.

(d) Requiring Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees to purchase business-related equipment for work-related purposes - without reimbursing employees for such use.

38. Moreover, Defendants employed policies and procedures which ensured Plaintiff and aggrieved employees would not receive indemnification for their employment related expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such indemnification in compliance with California law.

39. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their employment related expenses, including but not limited to costs related to use of their personal cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

40. **Failure to timely pay earned wages during employment:** In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following

1 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
2 paid within seven (7) calendar days following the close of the payroll period in which wages were
3 earned. Labor Code section 204(d).

4 41. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
5 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
6 exempt employees' earned wages (including minimum wages, overtime wages, meal period
7 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
8 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
9 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
10 their earned wages within the applicable time frames outlined in Labor Code section 204.

11 42. **Failure to provide complete and accurate wage statements:** Labor Code section
12 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
13 employee his or her wages, the employer must "furnish each of his or her employees ... an
14 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
15 employee, except for any employee whose compensation is solely based on a salary and who is
16 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
17 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
18 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
19 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
20 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
21 name of the employee and his or her social security number, (8) the name and address of the legal
22 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
23 the corresponding number of hours worked at each hourly rate by the employee."

24 43. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
25 and other current and former aggrieved California-based hourly non-exempt employees all wages
26 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
27 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
28 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code

1 section 226.

2 44. **Failure to pay employees all wages due at time of termination/resignation:** An
3 employer is required to pay all unpaid wages timely after an employee's employment ends. The
4 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
5 hours of resignation (Labor Code section 202).

6 45. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
7 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
8 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
9 and/or rest period premium wages), Defendants failed to pay those employees timely after each
10 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

11 46. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
12 employee, on behalf of himself or herself and other current or former employees, to bring a civil
13 action to recover civil penalties against all Defendants pursuant to the procedures specified in
14 Labor Code section 2699.3.

15 47. Plaintiff has complied with the procedures for bringing suit specified in Labor
16 Code section 2699.3. On April 24, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
17 and provided notice to Defendants by certified mail which provided notice of the specific
18 provisions of the Labor Code alleged to have been violated, including the facts and theories to
19 support the violations alleged.

20 48. Plaintiff filed an Amended PAGA Claim Notice on June 6, 2023, and provided
21 notice to Defendants by certified mail which provided notice of the specific provisions of the
22 Labor Code alleged to have been violated, including the facts and theories to support the
23 violations alleged.

24 49. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
25 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
26 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
27 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
28 to investigate Plaintiff's claims.

50. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510, 512, 1194, 1197, and 2802, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, and 2802; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558].

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1].

51. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with thier claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF THEMSELVES AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

1 2. For any and all legally applicable penalties during the relevant statute of limitations
2 subject to any permissible tolling, including but not limited to those recoverable under the
3 California Labor Code, including but not limited to section 2699(f);

4 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
5 under California Labor Code section 2699(g); and

6 4. For such and other further relief, in law and/or equity, as the Court deems just or
7 appropriate

8
9 Dated: June 29, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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11 By: *Vincent C. Granberry*
12 Joseph Lavi, Esq.
13 Vincent C. Granberry, Esq.
14 Danielle E. Montero, Esq.
15 Attorneys for Plaintiffs
16 DARLENE ATKINS, OLIVIA STEPHANIE
17 AGGAS, and PHYLLIS A. PEEVY, behalf of
18 themselves and current and former aggrieved
19 employees
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