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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

LILLIAN DAVENPORT, on behalf of the State of California, and others similarly situated and aggrieved, Plaintiff, v. BROOKDALE SENIOR LIVING COMMUNITIES, INC., a Delaware Corporation; EMERITUS CORPORATION, a Washington Corporation; and DOES 1-100, inclusive, Defendants.	Case No.: STK-CV-UOE-2023-0009791 Assigned for All Purposes to: Hon. Barbara Kronlund Dept. 10D **DECLARATION OF SEPIDEH ARDESTANI IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT** Date: TBD Time: 9:00 a.m. Dept.: 10D

DECLARATION OF SEPIDEH ARDESTANI

I, SEPIDEH ARDESTANI, Declare:

1. I am an attorney duly licensed to practice in California and before this Court, and I am a partner with Crosner Legal PC, counsel of record for plaintiff Lillian Davenport. I make this declaration in support of Plaintiff's Motion for Approval of PAGA Settlement. If called to testify as to the within facts, I would and could competently do so.

2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties' PAGA Settlement Agreement (the "Settlement Agreement"). Attached hereto as Exhibit 2 is true and correct copy of the proposed notice letter to the Aggrieved Employees. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiff Davenport's PAGA notice letter and proof of submission. Attached hereto as Exhibit 4 is a true and correct copy of proof of submission of the proposed settlement to the LWDA.

3. Other than the related cases addressed below that are being resolved as part of this settlement, I am unaware of any other cases or matters that may be related to this matter or that may have overlapping claims or "aggrieved employees."

BACKGROUND

4. Defendants all are part of a national senior living company that owns/operates over 1,100 communities in 46 states, including 32 locations in California. Defendants provide independent living, assisted living, memory care, skilled nursing, continuing care retirement communities, and at home care.

5. Plaintiff Davenport worked for Defendants from April 2022 through May 2023 as a non-exempt Caregiver at Brookdale Kettleman Lane. On September 13, 2023, and after exhausting her administrative remedies with the LWDA, she filed a representative complain2022,eking penalties pursuant to PAGA for Defendants Emeritus Corporation and Defendant Brookdale Senior Living Communities for the alleged failure to pay all minimum wages, overtime wages, premium wages in lieu of late, short, or denied meal and rest periods, all wages due upon separation of employment, failure to furnish accurately itemized wage statements, and failure to reimburse business expenses to Plaintiff and Aggrieved Employees

defined as “all current and former non-exempt employees employed by Defendants in California at any time during the PAGA Period (July 10, 2022 to the present).

6. Plaintiff Blake worked full time for Defendants as a medication technician. Plaintiff Hernandez worked as an hourly paid, non-exempt employee from approximately October 2022 to June 2023 at the Brookdale Senior Living location in Roseville, California. On February 6, 2024, and after exhausting her administrative remedies with the LWDA, Plaintiff filed a representative complaint seeking civil penalties under PAGA by Defendants Brea Citrus Heights LLC; Emeritus Corporation; Brookdale Senior Living Communities, Inc; Brookdale Senior Living Foundation; and Jerry Lynn against Plaintiff Blake and all Aggrieved Employees, defined as “all employees of Defendants working during the Civil Penalty Period [November 15, 2022 to present].”

7. Plaintiff Hernandez was an hourly paid, non-exempt employee from approximately October 2022 to June 2023, and she worked for Defendants as a Care Giver at the Brookdale Senior Living location in Roseville, California. On October 13, 2023, Plaintiff Hernandez filed her notice of claims under PAGA with the LWDA. On December 18, 2023, and after exhausting her administrative remedies with the LWDA, she filed a representative complaint seeking penalties pursuant to PAGA for Defendant. Plaintiff Hernandez alleged a failure to pay all minimum wages and overtime wages, provide meal periods, provide rest periods, provide accurate and complete wage statements, maintain payroll records, timely pay all earned wages during employment and upon termination, pay without unlawful deductions, pay at least the minimum wage rate required by statute, pay all vested vacation time, properly calculate and pay all sick pay, provide one day’s rest in seven, provide suitable seating, pay reporting time pay, pay split shift premiums, provide sufficient toilet facilities, reimburse business expenses, provide written notice of material employment information, timely notify employees of potential COVID-19 exposure, and Defendants’ requirement that employees patronize Defendants’ business in the purchase of anything of value.

8. Plaintiff Torossian started working for Defendants on or around June 2023 as a chef and Dining Services Manager, until his employment ended on or around October 26, 2023. On October 31, 2023, Plaintiff Torossian filed his notice of claims under PAGA with the LWDA.

On January 5, 2024, and after exhausting his administrative remedies with the LWDA, Plaintiff filed an individual and PAGA representative complaint asserting the following claims: 1) failure to compensate for all hours worked; 2) failure to pay minimum wages; 3) failure to pay overtime; 4) failure to provide accurate itemized wage statements; 5) failure to pay wages owed every pay period; 6) failure to give rest breaks; 7) failure to give meal breaks; 8) failure to reimburse business expense; 9) failure to pay wages when employment ends; 10) Private Attorneys General Act (PAGA); 11) failure to provide personnel file; 12) failure to provide pay records; and 13) violation of California Business and Professions Code Section 17200.

9. Plaintiff Garcia was employed by Defendants as a non-exempt "Caregiver" at Defendants' "Dementia and Alzheimer's Senior Living" facility in Corona, CA from approximately November 17, 2022, to April 23, 2023. On January 9, 2024, Plaintiff Garcia submitted her notice of claims under PAGA with the LWDA and filed a class action complaint in Riverside County Superior Court on the same date. Plaintiff Garcia subsequently amended the complaint on April 12, 2024, to add a cause of action under PAGA after completing the exhaustion period. On April 29, 2024, Plaintiff Garcia dismissed her class claims without prejudice, while maintaining her PAGA claim in Superior Court. On May 28, 2024, Plaintiff Garcia submitted her individual claims to arbitration with the American Arbitration Association. Plaintiff Garcia's claims (in both the PAGA action and the individual arbitration) are based on allegations that Defendants miscalculated the regular rate of pay for overtime purposes by failing to incorporate various forms of compensation, including "Sign On Bonuses" and other forms of bonuses and/or incentive pay, failed to provide compliant meal periods and authorize compliant rest periods due to pervasive understaffing, failed to pay meal and rest period premiums for violations and in the event that meal or rest period premiums were paid, paid them at the incorrect rate due to the miscalculation of the regular rate of pay, failed to reimburse employees for business expenses including the purchase of a required uniform shirt with Defendants' name and logo on it, and underpaid required sick pay wages as an additional result of miscalculating the regular rate of pay.

10. Once the cases were at issue, the Parties initiated discovery and began meeting and

conferring regarding discovery, potential law and motion, and other case management issues, and eventually agreed to attempt a global mediation of cases and claims. They also agreed to and did informally exchange information to permit both sides to evaluate Plaintiffs' allegations. Through this informal discovery, Defendants provided Plaintiffs with information including, inter alia, Plaintiffs' personnel files, the number of potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for a sampling of about 20% of the Aggrieved Employees, and relevant policy documents regarding Defendants' time keeping and reporting policies and meal and rest break policies, among other pertinent materials.

11. In September 2024, the Parties mediated all cases with Steve Mehta, Esq., a respected professional neutral with extensive class action/wage and hour experience. Before and during the mediation, Plaintiffs and their counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiffs' claims and Defendants' defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. After a contentious day of negotiations, the Parties reached agreement after a mediator's proposal and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval.

12. Pursuant to the Settlement, Plaintiffs filed a First Amended Complaint in this matter, consolidating all causes of action and plaintiffs from each of the Actions as defined in the Settlement.

SUMMARY OF SETTLEMENT TERMS

13. Under the settlement, Defendants will pay a non-reversionary settlement amount of $2,537,500 (the "Maximum Settlement Amount" or "MSA"). The MSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than $21,995), a modest service award to each Plaintiff, and reasonable attorney's fees and costs (Plaintiffs' counsel collectively request 1/3 of the MSA ($845,833.33) in fees and costs of $33,209.19. Plaintiffs each request a modest service award of $5,000.00 ($25,000 total). After

payment of settlement administration costs, Plaintiffs' service awards, and reasonable attorney's fees and costs from the MSA, Plaintiffs presently estimate about $1,611,462.48 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $1,208,596.86) will go to the LWDA, and the remaining 25% (about $402,865.62) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period of March 27, 2023, to April 15, 2025. I estimate the average award at about $69 per individual, based on $2.76 per pay period.

14. The Parties propose using Phoenix Settlement Administrators as the Settlement Administrator. Phoenix has extensive experience administering PAGA settlements and has agreed to cap its fees at $21,995.00. Defendants will fund the MSA within 30 calendar days of the Effective Date, and within 10 business days after funding Phoenix will mail a Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in Defendants' records. Aggrieved Employees need not submit claim forms and will automatically receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the California State Controller's Unclaimed Property Fund.

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

<u>THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL</u>

16. Plaintiffs first contend Defendants failed to pay at least the applicable minimum wage for all hours worked for several reasons. First, Plaintiffs allege Defendants' facilities typically had only a single time clock available, which resulted in long lines of employees waiting to clock in/out as each shift turned over and also when clocking in/out for meal breaks. Plaintiffs further alleged Defendants' facilities regularly were understaffed and, as a result of this policy, employees regularly had to work through meal/rest breaks, stay late while waiting for the next shift to arrive, etc., all of which time went unrecorded and uncompensated. Plaintiffs allege employees typically lost as much as 15 minutes per shift in pay due working "off the clock."

17. Plaintiffs next contend Defendants failed to pay all wages due because it did not pay meal period premiums, overtime, and sick pay wages based on the correct "regular rate" of pay, and instead made such payments based on employees' base hourly wage without accounting for bonuses and other non-discretionary pay. <u>Marin v. Costco Wholesale Corp.</u> (2008) 169 Cal.App.4th 804, 807 (holding that bonuses must be included in the calculation of an employee's regular rate of pay); <u>Alvarado v. Dart Container Corp. of Cal.</u> (2018) 4 Cal. 5th 542 549 (holding that bonuses should be factored into the employee's regular rate of pay so the regular rate reflects all forms of regular compensation that the employee earned). Here, Plaintiffs contend employees regularly received various non-discretionary bonuses and this non-discretionary income was not factored into the "regular rate" of pay. Per Plaintiffs, this resulted in the underpayment of sick time, overtime, and meal period premiums for all pay periods where an employee both had sick time, overtime, or a meal period violation and earned any kind of non-discretionary bonus pay.

18. On the meal break claims, Plaintiffs allege that even though Defendants' written meal and rest period policies seem facially compliant, as applied there were substantial "de facto" violations for lunches that either were missed completely, untimely, or cut short. Per Plaintiffs' experts' review, the data suggested at least a 33.5% violation rate for such missed or non-compliant breaks. On top of the "de facto" violations, Plaintiffs also contended Defendants had a

policy that required employees to record lunches at exactly 30 minutes regardless of how long the lunch break actually lasted or whether it was interrupted by work. On the rest break claims, Plaintiffs likewise allege employees did not receive all required rest breaks and argued that Plaintiffs and other Aggrieved Employees regularly worked through rest periods in order to meet the demands of their jobs.

19. On the expense reimbursement claim, Plaintiffs allege employees had to use personal cell phones for work-related reasons and further had to launder and maintain their work uniforms. An employer must reimburse employees for use of personal devices, and if the employee has an unlimited monthly plan then the employer must reimburse an amount that equates to the employee's percentage of use for work. Cochran v. Schwan's Home Serv. (2014) 228 Cal.App.4th 1137. Additionally, Plaintiffs allege that due to the nature of residential care facility work, employees' work uniforms were exposed to germs and bacteria, or otherwise became abnormally soiled, such that they incurred additional utility and laundry expenses for the upkeep of their work uniforms without any reimbursement. California Manufacturers Ass'n v. IWC, (1980) 109 Cal.App.3d 95, 106 ("[g]arments requiring separate laundering because of heavy soil or color require more than 'minimal care' by modern standards, and the employer who requires such uniforms must provide for their maintenance."). [Ardestani Decl., ¶ 15.]

20. Finally, Plaintiffs also allege claims derivative of the foregoing claims, including a derivative wage statement claim based on the failure to pay all wages due, and failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-203.

21. For mediation, Defendants indicated they employed approximately 5,840 non-exempt employees in California during the relevant time frame, and these individuals worked approximately 145,786 pay periods during that time. Based on the data provided by Defendants, Plaintiffs estimated Defendants' maximum PAGA exposure at approximately $64,247,200, including around $14,578.600 on the unpaid wage/off the clock claim, approximately $724,300 on the unpaid wage/regular rate claims, about $4,883,800 on the meal period claims, $14,578.600 on the rest period claims, $14,578.600 on the wage statement claims, $14,578.600 on the expense reimbursement claims, and about $324,500 in civil penalties for failing to timely pay wages on

separation of employment.

22. We calculated these amounts as follows:

Unpaid Wages/Off the Clock

145,786 pay periods * 100% violation rate * $100/violation = $14,578.600

Unpaid Wages/Regular Rate

145,786 pay periods * 4.97% violation rate * $100/violation = $724,300

Meal Period Violations

145,786 pay periods * 33.5% violation rate * $100/violation = $4,883,800

Rest Period Violations

145,786 pay periods * 100% violation rate * $100/violation = $14,578.600

Expense Reimbursement Claim

145,786 pay periods * 100% violation rate * $100/violation = $14,578.600

Wage Statement Violations

145,786 pay periods * 100% violation rate * $100/violation = $14,578.600

Waiting Time Penalties

3,245 former employees * 1 violation/employee * $100/violation = $324,500

23. On Plaintiffs' unpaid wage/off the clock claim, Defendants argued their time keeping policies accurately tracked and paid for all hours worked by their employees and did not deprive employees of compensable hours worked. Brookdale also emphasized that its policies strictly prohibited any "off the clock work," that employees were not required to arrive at work early or otherwise work "off the clock," and to the extent it happened it was not done with management's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Defendants further argued proving this claim would require hundreds of individualized inquiries and would be impossible to resolve on a representative basis.

24. In response to Plaintiffs' unpaid wage/regular rate claim, Defendants argued that the bonuses Plaintiffs claim should have been included in the "regular rate" were, in fact, properly factored into the regular rate and/or were discretionary in nature and therefore properly excluded

from the regular rate calculation. Consequently, per Defendants, these “bonuses” did not influence the employees’ regular rate of pay when calculating meal premiums, sick pay, and/or overtime rates and, thus, employees were paid at the correct hourly rate.

25. On the meal break claims, Defendants offered multiple defenses. First, they emphasized the strength of their written policies, as well as reporting mechanisms for payment of meal premiums. Defendants further emphasized they provide all necessary meal breaks, and that employees received full uninterrupted lunch periods as reflected in their time records. Defendants further argued that even to the extent meal breaks were missed or arguably non-compliant, it was in violation of Company policy and aberrational and would require significant individual inquiries to determine the reasons underlying any such alleged violations and whether it was by employee choice or some other reason. Thus, per Defendants, any trial on this issue would be unmanageable because of these individualized issues.

26. As with meal breaks, Defendants argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks, that such breaks were a net 10 minutes and otherwise fully compliant, and employees could leave the premises. Further, per Defendants, in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make a trial unmanageable since the number of instances an employee missed a rest break would have to be tested on a case-by-case basis to determine compliance.

27. For Plaintiffs’ expense reimbursement claim, Defendants emphasized there be no need for employees to use their personal cell phones for work purposes, and if they did it was purely for personal convenience and therefore it was not reimbursable as a “necessary” business expense. Defendants further asserted that employees were provided sufficient uniforms, and no specific laundering and/or maintenance requirements existed such that reimbursement would be necessary.

28. Plaintiffs also alleged derivative violations of Labor Code § 226 (wage statement

violations) and §§ 201-203 (waiting time penalties). Both claims, since they are entirely derivative, will rise or fall along with the primary claims, in addition to being subject to "good faith" and other defenses available to Defendants. Accordingly, Plaintiffs had to discount the value of these claims significantly in light of these multiple potential defenses. Defendants also contended a substantial discount should be applied to the civil penalties for these derivative (i.e., "stacked") violations, as it would be unfair to penalize Defendants multiple times for the same violation.

29. Defendants also emphasized PAGA gives the Court wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h). I am aware of multiple state and federal courts in California have applied significant reductions to PAGA civil penalties even after plaintiffs prevailed on the merits, and Plaintiffs accounted for this possibility in evaluating the proposed settlement.

30. Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs' claims, anyone of which, if successful, could have derailed Plaintiffs' case. And Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In additional to its merits defenses and arguing trial would be unmanageable, Defendants also intended to raise additional defenses on damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties.

31. Although Plaintiffs, co-counsel and I believe they could have prevailed, there was no such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiffs would have to shoot the moon and win both liability and maximum penalties on all claims for every single pay period at issue, which outcome, for the reasons discussed, is unlikely. Given Defendants' various procedural and merits

defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is reasonable.

SUBMISSION TO THE LWDA

32. Plaintiffs timely provided the LWDA with the Settlement Agreement and this Motion and notified the LWDA of this approval hearing via the LWDA's online portal. Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement.

PLAINTIFFS' ENHANCEMENTs

33. A modest incentive award for each Plaintiff is appropriate under applicable law. Both devoted time and resources to the litigation, provided documents, assisted counsel with investigating the claims asserted and in preparing for mediation. Here, the Settlement Agreement provides for an enhancement of up to $10,000.00 to each Plaintiff. The requests are reasonable given the risks they undertook on behalf of the Aggrieved Employees and State. By contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent employees, while shouldering the risk of being liable for Defendants' litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. As stated in their respective declarations filed herewith, among taking many other actions assisting in the successful litigation of this case, Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments.

THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

34. Under the terms of the Settlement Agreement, co-counsel and I respectfully request an award of attorney's fees to Plaintiffs' counsel equal to 1/3 of the total settlement amount, or $845,833.33. A one-third common fund attorney fee award is consistent with what courts have awarded my office in other representative actions, and a one-third award is favored

by California courts when a fund established for the common benefit of others is involved, such as here. Plaintiffs' counsel will split any fees awarded as follows: 28.5% to Crosner Legal, PC, 23.5% to Capstone Law APC, 13% to Messrelian Law Inc., 22% to Haines Law Group, APC, and 13% to Bibiyan Law Group, P.C. All Plaintiffs have been informed of the proposed fee split and consented thereto in writing.

35. There are several additional factors why I believe that the Court should award one-third of the common fund as a reasonable attorney's fee. First, our efforts resulted in a common fund settlement amount of $845,833.33, which for the reasons explained, is fair and reasonable in light of the risks/defenses Defendants raised in litigation and threatened to raise at trial and in post-trial appeals. Further, this is a significant sum that furthers the purposes underlying PAGA such as augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring future non-compliance. Moreover, this result was achieved by the work and success of this office and our co-counsel, who negotiated the settlement after extensive preparation, informal discovery, and an adversarial mediation.

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

37. Third, Plaintiffs' counsel collectively are experienced class and representative action litigators and collectively have achieved numerous approved PAGA settlements. This experience and expertise, combined with the high quality of work performed, resulted in the settlement achieved in this case.

38. I graduated from the University of California, Los Angeles in 2004 with a bachelor's in science, obtained my J.D. from Whittier Law School in 2009, and earned a master's in law from Santa Clara University School of Law in 2010. I have been a member of the California Bar since 2010 and have extensive experience in employment matters, including wage and hour litigation. I worked as a wage and hour class action attorney at Gaines & Gaines,

APLC from 2012 through 2021 and, prior to joining Gaines & Gaines I worked at Sirkin Law Group as a litigation associate from 2010-2012. I joined Crosner Legal in December 2021, and I am a Partner. I have solely handled employment, wage and hour class actions, and PAGA lawsuits for some 13 years. I was selected for 2020-2021 by Super Lawyers as a "Southern California Rising Star" for employment and labor law.

39. Zach Crosner is a 2010 graduate of University San Diego School of Law and has some 15 years of experience as a practicing attorney, all of which have focused on litigation of employment, labor law, consumer, and class action claims. Following graduation, he immediately began working for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he had the fortune of working directly with past presidents of the consumer attorneys and recipients of trial attorneys of the year awards. He also worked for former CAALA and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole associate attorney. During his tenure at these firms, he focused on advocating for the rights of consumers and employees in class action litigation, civil rights and employment litigation, catastrophic injuries, insurance bad faith and appellate litigation.

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

41. Mr. Crosner currently is an executive board member of the Wage and Hour Committee and the Legislative Committee for the California Employment Lawyers Association; a member of the Grassroots Advocacy Team for the National Employment Lawyers Association; Wage and Hour Committee member and Class Action Committee member for the National Trial Lawyers; a member of the American Association for Justice; and member of the Pound Civil Justice Institute. He was selected for 2018-20 by Super Lawyers as a "Southern

California Rising Star" for employment and labor law.

42. Jamie Serb is a partner with Crosner Legal and head of the firm's Wage & Hour practice group. She graduated from the University of California, San Diego in 2004 and graduated from California Western School of Law in 2013 and has been a member of the California Bar since 2013. She gained extensive experience in wage and hour litigation, beginning work as a class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley Law Firm, APLC). She has handled wage and hour class actions and PAGA lawsuits for some 10 years and has assisted in obtaining millions of dollars for employees during her years of practice.

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

44. Kiara Bramasco received her undergraduate degree, magna cum laude, from Loyola Marymount University in Political Science, and then received her JD from Loyola Law School in 2018. She then spent several years with well-known plaintiff's firm Moss Bollinger, first as a law clerk and then as an associate, where her practice focused on employment law, particularly wage and hour class action and PAGA litigation. She joined Crosner Legal in 2021.

45. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class action settlements while serving as lead class counsel in recent years, including but not limited to a $1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a $4.1 million wage and hour class action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty. Super Ct.)); a $1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a $1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*

dba American Ambulance, Case No. 17C-0162 (Kings Cty. Super Ct.)), a $1.3 million wage and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a $1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.), a $1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a $7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a $2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.,* Case No. LS029737 (Los Angeles Cty. Super. Ct.));.a $2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a $1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a $1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a $2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a $2.5 million wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super. Ct.); $1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a $1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a $1.5 million wage and hour class action settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a $1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No. 20STCV06618 (Los Angeles Cty. Super. Court); a $1.925 million wage and hour class settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); a $1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.); a $2.65 million wage and hour class action settlement in 2024 in

Shilevinatz v. Airport Terminal Services, Case No. CIVSB2229072 (San Bernardino Cty. Super Ct.) and a $1 million wage and hour class action settlement in 2025 in *Hernandez v YZER, LLC*, Case No. 23CV025345 (Alameda Cty. Superior Ct).

46. Based upon the qualifications and experience set forth above, the following hourly rates are reasonable for attorneys practicing in this area of the law in California: Zachary M. Crosner $850/hour, Jamie K. Serb, $750/hour, Nikki Trenner $750/hour, Kiara Bramasco $650/hour, and Branden Hamilton $600/hour.

47. I request the Court apply the above hourly billing rates in this case, as it reasonable in the California legal market for attorneys handling wage and hour class and PAGA actions. I have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour class action firms in major California legal markets for partner-level attorneys with experience comparable to mine. These rates have ranged from $750 to $900 per hour for calendar years 2018-2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los Angeles, with 28 years of experience, $900/hour (2023), Matthew Matern of Matern Law Group in Los Angeles, with approximately 26 years of experience $850/hour (2018); Craig Ackermann of Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience $850/hour (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and 45 years of experience respectively, both $825/hour (2018), Zachary Crosner of Crosner Legal PC in Los Angeles, 13 years of experience $750/hour (2022), and James Kawahito of Kawahito Law Group in Los Angeles, with approximately 16 years of experience $750/hour (2020).

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

49. Fourth, our office, along with co-counsel, has been representing Plaintiff (and the State of California) in this matter on a strictly contingent basis and as such, had to forego other financial opportunities to litigate other cases, incurred the risk of non-recovery after a substantial

investment of time, money, and resources, and have done so since the inception of this case without any payment or compensation. This is not an easy burden for a small firm. If, despite these hardships and risks, the best this office could hope for is merely to be paid our customary hourly rate multiplied by the number of hours worked on the case, then we would not be compensated for the hardships and serious risks it faced litigating this contingency case, and would not be incentivized to take on similar private attorney general cases in the future.

50. Fifth, the request for attorney's fees in the amount of one-third of the common fund falls well within the norms accepted by state and federal courts in California in comparable wage and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery under the common fund doctrine was recently approved by the California Supreme Court in Laffitte v. Robert Half Int'l, Inc. (2016) 1 Ca1.5th 480. For all of the above reasons, a common fund fee award here in the amount of one-third of the $2,537,500 common fund, or $845,833.33, is fair and reasonable.

51. I have reviewed the work performed on the case and the billing inputted, and Crosner Legal's hours worked on this case total 176 attorney hours. Accordingly, Crosner Legal's lodestar totals approximately $122,195, exclusive of time for attending the hearing on the approval motion and time to be incurred thereafter to implement and administer the settlement. Crosner Legal's aggregated lodestar is set forth in the time records in Exhibit 5 hereto. When combined with our co-counsel's respective lodestars, the total lodestar for all counsel is $612,995.00.

52. As noted, we have represented Plaintiff Davenport and the Aggrieved Employees for over two years with respect to this matter and have expended a significant amount of time and resources in that representation. Crosner Legal agreed to litigate this case on a purely contingent basis and in so doing assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with these matters in general. Under all relevant factors as outlined herein, in our co-counsel's declarations, and in the accompanying memorandum, I respectfully request the Court award the requested fees of $845,833.33 based on the common fund theory with a corresponding lodestar cross-check and a reasonable lodestar modifier of 1.38.

53. I also request reimbursement of Crosner Legal's actual out-of-pocket expenses incurred to prosecute this action, along with our co-counsel's respective costs. These expenses were incidental and necessary to the effective representation of the employees.

54. Crosner Legal's costs are $33,209.19 including court filing/service of process fees, expert witness fees, postage, and mediation fees. The requested costs are reasonable and uncontested and should be approved and a true and correct itemization of the costs and expenses incurred is set forth below:

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	$2,758.67
Mediation Fees	$10,000.00
Expert Witness Fees	$7,865.00
Postage/Delivery	$189.72
PAGA Filing Fee	$75.00
Total Costs and Expenses	**$20,888.44**

When combined with our co-counsel's costs, the total amount requested by all counsel is $33,209.19, and I request the Court approve reimbursement of those costs in full to Plaintiffs' counsel.

55. For the foregoing reasons, it is respectfully requested that the Court approve the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 15, at Los Angeles, California.

S. Ardestani

Declarant

EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Settlement") of claims brought under the Private Attorneys General Act, Labor Code § 2698 *et seq.* ("PAGA"), is made and entered into between Plaintiffs Lillian Davenport, Destiny Hernandez, Artin Torossian, Griselda Garcia, and Jalisa Monique Blake (collectively, "Plaintiffs"), acting in their capacity as a private attorneys general, and Defendants Emeritus Corporation; Brea Emeritus LLC; Emeritus Properties XVI, Inc.; Brookdale Senior Living Communities, Inc.; Brookdale Employee Services, LLC; Brookdale Employee Services – Corporate, LLC; Brookdale Liberty, LLC; Brookdale Management of California, LLC; Brookdale Chancellor, Inc.; Brookdale Gardens, Inc.; Brookdale Living Communities, Inc.; Brookdale Wellington, Inc.; Brookdale Operations, LLC; Brookdale Vehicle Holding, LLC; Brookdale Provident Management, LLC; Summerville at Heritage Place, LLC; Summerville at Barrington Court LLC; Summerville at Fairwood Manor, LLC; Summerville at Cobbco, Inc.; Summerville at Roseville Gardens LLC; Summerville at Harden Ranch, LLC; Summerville at Atherton Court LLC; BKD Twenty-One Propco, Inc.; BKD Twenty- One Opco, Inc.; BKD Twenty-One Management Company; BKD Gardens-Tarzana Propco, LLC; BKD Personal Assistance Services, LLC; BKD Corona LLC; BKD Kettleman Lane LLC; BKD Cortona Park, LLC; BKD Folsom LLC; BKD Lodi, LLC; BKD FM7 Holdco CA, LLC; BKD Arbors of Santa Rosa, LLC; and Brea Citrus Heights, LLC (collectively, "Defendants").

On September 13, 2023, Plaintiff Lillian Davenport filed a representative complaint in the Superior Court of California, for the County of San Joaquin, titled *Lillian Davenport v. Brookdale Senior Living Communities, Inc., et al.*, Case No. STK-CV-UOE-2023-9791 (the "*Davenport Action*"), alleging the following: (i) failure to pay minimum wages; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure to authorize and permit rest breaks; (v) failure to reimburse business expenses; (vi) failure to provide accurate itemized wage statements; (vii) failure to pay wages timely during employment; violation of Business and Professions Code §§17200, *et seq.*; and (ix) enforcement of PAGA.

On December 18, 2023, Plaintiff Destiny Hernandez filed a representative complaint in the Superior Court of California, for the County of Santa Clara, titled *Destiny Hernandez v. Emeritus Corporation, et al.*, Case No. 23CV427931 (the "*Hernandez Action*"), seeking civil penalties pursuant to PAGA.

On January 5, 2024, Plaintiff Artin Torossian filed an individual and representative complaint in the Superior Court of California, for the County of Los Angeles, titled *Artin Torossian v. Brookdale Employee Services, LLC, et al.*, Case No. 24STCV00323 (the "*Torossian Action*"), alleging the following: (i) failure to compensate for all hours worked; (ii) failure to pay minimum wages; (iii) failure to pay overtime; (iv) failure to provide accurate itemized wage statements; (v) failure to pay wages owed every pay period; (vi) failure to authorize rest breaks; (vii) failure to provide meal breaks; (viii) failure to reimburse business expenses; (ix) failure to pay all wages due upon separation of employment; (x) enforcement of PAGA; (xi) failure to provide personnel file; (xii) failure to provide pay records; and (xiii) violation of Business & Professions Code §§ 17200, *et seq*.

On January 9, 2024, Plaintiff Griselda Garcia filed a class action complaint in the Superior Court of California, for the County of Riverside, titled *Griselda Garcia v. Emeritus Corporation, et al.*, Case No. CVRI2400128 (the "*Garcia Action*"), alleging the following: (i) failure to pay overtime wages; (ii) failure to provide to provide compliant meal periods; (iii) failure to authorize and permit rest periods; (iv) failure to reimburse business expenses; (v) failure to furnish accurate, itemized wage statements; (vi) failure to pay all wages due upon separation of employment; and (vii) violation of Business and Professions Code §§17200, *et seq*. On April 12, 2024, after Plaintiff Garcia exhausted her administrative remedies with the LWDA, Plaintiff Garcia filed a First Amended Class and Representative Action Complaint, adding an eighth cause of action for civil penalties under PAGA premised upon the same underlying Labor Code violations. On April 30, 2024, the court dismissed Plaintiff Garcia's individual and class claims against Defendants without prejudice, and retained Plaintiff Garcia's representative claims against Defendants under PAGA.

On February 6, 2024, Plaintiff Jalisa Monique Blake filed a representative complaint in the Superior Court of California, for the County of Sacramento, titled *Jalisa Monique Blake v. Brea Citrus Heights LLC, et al.*, Case No. 24CV002189 (the "*Blake Action*"), seeking civil penalties pursuant to PAGA.

As a material term of this Settlement, the Parties agree that Plaintiff Lillian Davenport will file a First Amended Complaint ("FAC") in the *Davenport Action*, adding Plaintiffs Destiny Hernandez, Artin Torossian, Griselda Garcia, and Jalisa Monique Blake as named plaintiffs in the *Davenport Action*, consolidating all causes of action and factual allegations in the *Hernandez Action*, *Torossian Action*, *Garcia Action*, and *Blake Action* into the *Davenport Action*, and consolidating all claims under the PAGA based on the facts alleged in Plaintiff Davenport's June 29, 2023 PAGA Notice to the LWDA, Plaintiff Hernandez's October 13, 2023 PAGA Notice to the LWDA, Plaintiff Torossian's October 31, 2023 PAGA Notice to the LWDA, Plaintiff Garcia's January 9, 2024 PAGA Notice to the LWDA, and Plaintiff Blake's November 15, 2023 PAGA Notice to the LWDA into the *Davenport Action*. Following the filing of the FAC, Plaintiffs Hernandez, Torossian, Garcia, and Blake will dismiss their respective separately filed actions, without prejudice as to any and all PAGA representative claims alleged therein.

I. DEFINITIONS

The following terms, when used in this Settlement, will have the following meanings:

1. "Actions" means the lawsuits entitled *Lillian Davenport v. Brookdale Senior Living Communities, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2023-9791, *Destiny Hernandez v. Emeritus Corporation*, Santa Clara County Superior Court, Case. No. 23CV427931, *Artin Torossian v. Brookdale Employee Services, LLC*, Los Angeles County Superior Court, Case. No. 24STCV00323, *Griselda Garcia v. Emeritus Corporation*, Riverside County Superior Court, Case No. CVRI2400128, and *Jalisa Monique Blake v. Brea Citrus Heights LLC*, Sacramento County Superior Court, Case Nos. 23CV011755 and 24CV002189.

2. "PAGA Aggrieved Employees" means: all of Defendants' current and former non-exempt employees in California who worked at any time during the PAGA Period (July 7, 2022 to the date the court approves this Settlement).

3. "Defendants" means Emeritus Corporation, LLC, Brookdale Senior Living Communities, Inc., Brea Emeritus LLC; Emeritus Properties XVI, Inc.; Brookdale Senior Living Communities, Inc.; Brookdale Employee Services, LLC; Brookdale Employee Services – Corporate, LLC; Brookdale Liberty, LLC; Brookdale Management of California, LLC; Brookdale

Chancellor, Inc.; Brookdale Gardens, Inc.; Brookdale Living Communities, Inc.; Brookdale Wellington, Inc.; Brookdale Operations, LLC; Brookdale Vehicle Holding, LLC; Brookdale Provident Management, LLC; Summerville at Heritage Place, LLC; Summerville at Barrington Court LLC; Summerville at Fairwood Manor, LLC; Summerville at Cobbco, Inc.; Summerville at Roseville Gardens LLC; Summerville at Harden Ranch, LLC; Summerville at Atherton Court LLC; BKD Twenty-One Propco, Inc.; BKD Twenty- One Opco, Inc.; BKD Twenty-One Management Company; BKD Gardens-Tarzana Propco, LLC; BKD Personal Assistance Services, LLC; BKD Corona LLC; BKD Kettleman Lane LLC; BKD Cortona Park, LLC; BKD Folsom LLC; BKD Lodi, LLC; BKD FM7 Holdco CA, LLC; BKD Arbors of Santa Rosa, LLC, and Brea Citrus Heights LLC.

The term "Defendants" as used herein excludes the entities named in *Hernandez* as Brookdale Living Communities of California, LLC and Brookdale Living Communities of California-San Marcos. These aforementioned entities will be dismissed without prejudice within ten (10) business days of execution of this Agreement.

4. "Court" means the Superior Court of California for the County of San Joaquin.

5. "Effective Date" means the date on which the Court signs an Order approving this PAGA Settlement.

6. "Individual Settlement Payment" means the amount to be paid to each PAGA Aggrieved Employee based on the formula described herein.

7. "LWDA" means the California Labor and Workforce Development Agency.

8. "Maximum Settlement Amount" is the non-reversionary sum of Two Million Five Hundred Thirty-Seven Thousand Five Hundred Dollars and Zero Cents ($2,537,500.00), which includes payments to all PAGA Aggrieved Employees, payment to the LWDA, payment of Plaintiffs' attorney's fees and costs, payment of Plaintiffs' representative enhancement payments, and payment to the Settlement Administrator for administration costs. Except as provided in Paragraph II.3 herein, in no event shall Defendants be liable for the payment of any amounts exceeding the Maximum Settlement Amount.

9. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and PAGA Aggrieved Employees after the following amounts (subject to Court approval) are deducted from the Maximum Settlement Amount: (a) Plaintiffs' attorneys' fees of up to one-third of the Maximum Settlement Amount, or $845,833.33; (b) Plaintiffs' reasonable verified litigation costs in an amount not to exceed $50,000.00; (c) Plaintiffs' representative enhancement payments of $5,000.00 each, for a total of $25,000.00; and (d) reasonable third-party administration costs up to $21,995.00.

10. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

11. "PAGA Period" means the time period from July 7, 2022 through the date the court approves this PAGA Settlement.

12. "PAGA Released Claims" means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaints of the Actions and Plaintiffs' PAGA Notices including, e.g., (1) failure to pay all statutory and minimum wages; (2) failure to properly calculate and pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to pay all wages due upon separation of employment; (6) failure to furnish accurately itemized wage statements; (7) failure to reimburse business expenses; (8) failure to maintain payroll records; (9) unlawful deductions: (10) failure to pay all vested vacation time; (11) failure to properly calculate and pay all sick pay; (12) failure to provide one day's rest in seven; (13) failure to provide suitable seating; (14) failure to pay reporting time pay; (15) failure to pay split shift premiums; (16) failure to provide sufficient toilet facilities, (17) failure to provide written notice of material employment information; (18) failure to timely notify employees of potential COVID-19 exposure; (19) requiring employees to patronize Defendants' business in the purchase of anything of value; (20) failure to provide personnel file; (21) failure to provide pay records; (22) failure to provide suitable resting facilities; (23) unlawful agreements; (24) unlawful financial and criminal history inquiries; (25) failure to provide a safe and healthful workplace; (26) refusal to make payment; (27) implementation of unlawful labor conditions; and (28) failure to provide final paychecks at the location of discharge or where work was last performed, that arose during the PAGA Period. PAGA Aggrieved Employees other than Plaintiffs will not be releasing any underlying wage and hour claims through this settlement, only PAGA claims. PAGA Aggrieved Employees will not be provided with the opportunity to opt out of this PAGA settlement and release.

13. "Parties" means Plaintiffs and Defendants.

14. "Plaintiffs" means Lillian Davenport, Destiny Hernandez, Artin Torossian, Griselda Garcia, and Jalisa Monique Blake.

15. "Plaintiffs' Counsel" means Crosner Legal, P.C., Capstone Law APC, Messrelian Law Inc., Haines Law Group, APC, and Bibiyan Law Group, P.C.

16. "Settlement Administrator" means Phoenix Class Action Administration Solutions.

II. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission of Liability or Representative Manageability for Other Purposes**. Nothing in this Settlement will be construed to be an admission by Defendants of any liability or wrongdoing as to Plaintiffs, PAGA Aggrieved Employees, or any other person, and Defendants specifically disclaim any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not, and may not be, cited or admitted as evidence of liability.

2. **Maximum Settlement Amount**. Defendants will pay $2,537,500.00 as the non-reversionary Maximum Settlement Amount. The Maximum Settlement Amount will be deposited with the Settlement Administrator within thirty (30) calendar days after the Effective Date.

3. **Representation as to Number of Pay Periods**. Defendants represent that the approximately 5,840 PAGA Aggrieved Employees worked approximately 143,786 aggregate pay periods during the PAGA Period. If the actual number of Pay Periods worked by all PAGA Aggrieved Employees during the PAGA Period is ultimately determined to exceed 165,353, then the Maximum Settlement Amount shall be increased by a pro rata amount for each additional pay period over 165,353 pay periods. However, Defendants have the right to shorten the PAGA Period in lieu of increasing the Maximum Settlement Amount.

4. **Net Settlement Amount**. The Parties agree that the following amounts should be deducted from the Maximum Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and PAGA Aggrieved Employees. Should the Court award a payment less than the amounts set forth herein, it will not affect the validity of the Agreement:

a. Plaintiffs' Attorney's Fees and Costs. Defendants will not oppose Plaintiffs' request for attorneys' fees in the amount of up to one-third of the Maximum Settlement Amount ($845,833.33) and actual costs incurred in prosecuting the Actions, up to $50,000.00 as supported by declaration. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on an IRS Form 1099-MISC issued to Plaintiffs' Counsel.

b. Plaintiffs' Representative Enhancement Payments. Defendants will not oppose Plaintiffs' request for representative enhancement payments in the amount of $5,000.00 each, for a total of $25,000.00, for their service to the State of California and the PAGA Aggrieved Employees. In the event the Court approves payments of less than the requested amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on IRS Forms 1099-MISC issued to Plaintiffs.

c. Administration Costs. Defendants will not oppose the Settlement Administrator's costs in the amount up to $21,995.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on an IRS Form 1099-MISC issued to the Settlement Administrator.

5. **Allocation of Net Settlement Amount**. The Net Settlement Amount will be distributed Seventy-Five Percent (75%) to the LWDA and Twenty-Five Percent (25%) to the PAGA Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to PAGA Aggrieved Employees will be allocated to the PAGA Aggrieved Employees as follows: To determine an Aggrieved Employee's Individual PAGA Payment, the 25% of the PAGA Penalties payable to Aggrieved Employees will be divided by the total pay periods worked by all Aggrieved Employees during the PAGA Period, multiplied by the number of pay periods worked by that individual Aggrieved Employee. All Aggrieved Employees will be entitled to payment for at least one pay period. The Individual Settlement Payments will be allocated as 100% penalties and will be reported on IRS Form 1099.

6. **PAGA Released Claims**. In consideration for the payments awarded pursuant to the terms of this Settlement, Plaintiffs, in their capacity as a private attorney general, acting on behalf of themselves, the State of California, and the PAGA Aggrieved Employees, agree that upon the date that Defendants deposit the entire Maximum Settlement Amount with the Settlement Administrator, Plaintiffs, the LWDA, and the PAGA Aggrieved Employees will release and discharge Defendants, together with any of their respective predecessors, current and former parents, subsidiaries, and affiliated entities and, with respect to each such entity, each of their respective officers, directors, employees, shareholders, owners, members, contractors, landlords, joint venturers, partners, insurers, brokers, attorneys, representatives, agents, successors, and assigns (the "Released Parties") from any and all liability for the PAGA Released Claims to the fullest extent permitted by law.

7. **Judgment**. As part of the Motion to approve the Settlement, Plaintiffs will submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement pursuant to Cal. Code Civ. Proc. § 664.6. This Settlement is expressly conditioned upon the Court entering an order as set forth herein.

III. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator**. The Parties agree to use Phoenix Class Action Administration Solutions to handle the administration of this Settlement.

2. **Provision of Information for PAGA Aggrieved Employees**. Within ten (10) business days after the Court's signing of the settlement approval order, Defendants will provide the Settlement Administrator with information for the PAGA Aggrieved Employees. Defendants will, in good faith, compile from their records a list of PAGA Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and will include each PAGA Aggrieved Employee's full name, last known mailing address, last known telephone number, Social Security numbers, and pay period information. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access will be limited to those with a need to use the list as part of the administration of the Settlement.

Within ten (10) business days of receiving the PAGA Aggrieved Employees' information from Defendants, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each PAGA Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator will also determine whether to the Escalator Clause in Paragraph II.3 has been triggered. The Settlement Administrator will obtain approval from all counsel for the Parties of the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letter and Individual Settlement Payments**. Within five (5) business days of receiving the PAGA Aggrieved Employees' information from Defendants, pursuant to Paragraph III.2, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Aggrieved Employees' addresses.

Within ten (10) business days of Defendants' deposit of the Maximum Settlement Amount, and after receiving approval from all counsel for the Parties pursuant to Paragraph III.2, the Settlement Administrator will mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English only, along with the Individual Settlement Payments to all PAGA Aggrieved Employees via First-Class U.S. Mail.

Each Individual Settlement Payment will be deemed 100% penalties and reported using an IRS Form 1099-MISC. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any funds from checks that are not negotiated within one hundred eighty (180) days of mailing to an PAGA Aggrieved Employee shall be transferred to the California State Controller's Office for Unclaimed Property in the name of each PAGA Aggrieved Employee who failed to cash a Settlement Payment check prior to the void date, unless otherwise ordered by the Court.

4. **Undeliverable Letters**. The Settlement Administrator will exercise its best judgment to determine the current mailing address for each PAGA Aggrieved Employee. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a Skip-Trace or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will perform a re-mailing.

Defendants fully discharge their obligations to those PAGA Aggrieved Employees to whom they will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by PAGA Aggrieved Employees. PAGA Aggrieved Employees will not have any right to opt-out or object to this Settlement.

5. **Payment of Remainder**. Within ten (10) business days of Defendants' deposit of the Maximum Settlement Amount, and after receiving approval from all counsel for the Parties pursuant to Paragraph III.2, the Settlement Administrator will issue the following payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiffs' Counsel; (3) Court-approved representative enhancement payments to Plaintiffs; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting**. The Settlement Administrator will provide an accounting declaration under oath to the Parties of the amounts paid from the Settlement as soon as practicable after the check cashing deadline described in Paragraph III.3.

7. **Tax Consequences**. Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and paid via IRS Form 1099-MISC issued to each PAGA Aggrieved Employee. Neither Plaintiffs nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

IV. MISCELLANEOUS PROVISIONS

1. **Non-Publicity**. The Parties agree that no Party will issue any press release nor other public representation regarding the settlement other than as necessary to obtain Court approval and

effectuate the terms of the Settlement. The Parties and their respective counsel agree to keep the terms of the Settlement confidential prior to filing the motion for PAGA settlement approval. Except as ordered by the Court, Plaintiffs and their counsel will not initiate any publicity or respond to any media or other inquiries about the terms of the settlement or the case.

2. **Successors**. This Settlement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Governing Law**. This Settlement will be construed under and governed by the laws of the State of California, without regard to choice of law principles. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement will be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it will be brought in the State of California, San Joaquin County.

4. **Complete Agreement**. The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

5. **Nullification of Settlement**. In the event that: (i) the Court does not approve the Settlement or a material term of the Settlement, as provided herein; or (ii) the Settlement does not become final for any other reason, then the Parties shall reserve the right to rescind this Settlement and any documents generated to bring it into effect, which will be null and void, and the Parties will be returned to their original respective positions.

6. **Judgment and Continued Jurisdiction**. After approval of this Settlement, the Court will have continuing jurisdiction per California Code of Civil Procedure § 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

7. **Waiver of Right to Appeal**. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

8. **Amendment or Modification**. This Settlement may be amended or modified only by a written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

9. **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or

encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10. **Authorization to Enter into Settlement**. Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. If they are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

11. **Execution and Counterparts**. This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

12. **Severability**. If any term or provision of this Settlement is held to be invalid or unenforceable, with the exception of the PAGA Released Claims embodied in Section I (12) and Section II (6), the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision. The PAGA Released Claims embodied in Section I (12) and Section II (6) are the essence of this Agreement and should they be deemed invalid or unenforceable, this Agreement may be declared null and void and any consideration received under this Agreement shall be immediately returned to Defendants.

13. **Waiver**. No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

14. **Enforcement Action**. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

15. **Mutual Preparation**. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

16. **Representation by Counsel**. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

17. **Cooperation and Execution of Necessarv Documents**. The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

18. **Use and Return of Aggrieved Employee Data.** Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants' unless, prior to the Administrator's payment of all Settlement Funds, Defendants' makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

19. **Binding Agreement**. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

LILLIAN DAVENPORT

Dated: 05 / 29 / 2025

Lillian Karaway

Lillian Davenport, Plaintiff

DESTINY HERNANDEZ

Dated: ________________

Destiny Hernandez, Plaintiff

ARTIN TOROSSIAN

Dated: ________________

Artin Torossian, Plaintiff

16. **Representation by Counsel**. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

17. **Cooperation and Execution of Necessary Documents**. The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

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IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

LILLIAN DAVENPORT

Dated: ________________

Lillian Davenport, Plaintiff

DESTINY HERNANDEZ

Signed by:
Destiny
3A313223AF3C4D0...

Dated: 6/5/2025

Destiny Hernandez, Plaintiff

ARTIN TOROSSIAN

Dated: ________________

Artin Torossian, Plaintiff

16. **Representation by Counsel**. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

17. **Cooperation and Execution of Necessary Documents**. The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

18. **Use and Return of Aggrieved Employee Data.** Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants' unless, prior to the Administrator's payment of all Settlement Funds, Defendants' makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

19. **Binding Agreement**. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

LILLIAN DAVENPORT

Dated: ________________ ______________________________

Lillian Davenport, Plaintiff

DESTINY HERNANDEZ

Dated: ________________ ______________________________

Destiny Hernandez, Plaintiff

ARTIN TOROSSIAN

Artin Torossian

Dated: 6/6/2025 ______________________________

Artin Torossian, Plaintiff

GRISELDA GARCIA

Dated: Jun 10, 2025

Griselda Garcia (Jun 10, 2025 14:36 PDT)

Griselda Garcia, Plaintiff

JALISA MONIQUE BLAKE

Dated: ____________________

Jalisa Monique Blake, Plaintiff

BROOKDALE SENIOR LIVING COMMUNITIES, INC.

Dated: ____________________

By: ____________________
Its: ____________________

EMERITUS CORPORATION

Dated: ____________________

By: ____________________
Its: ____________________

BREA EMERITUS LLC

Dated: ____________________

By: ____________________
Its: ____________________

EMERITUS PROPERTIES XVI, INC.

Dated: ____________________

By: ____________________
Its: ____________________

BROOKDALE EMPLOYEE SERVICES, LLC

Dated: ____________________

By: ____________________
Its: ____________________

GRISELDA GARCIA

Dated: ________________ ________________________________
Griselda Garcia, Plaintiff

JALISA MONIQUE BLAKE

Dated: 06/06/25
Jalisa Monique blake (Jun 6, 2025 14:27 PDT)
Jalisa Monique Blake, Plaintiff

BROOKDALE SENIOR LIVING COMMUNITIES, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

EMERITUS CORPORATION

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BREA EMERITUS LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

EMERITUS PROPERTIES XVI, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE EMPLOYEE SERVICES, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE EMPLOYEE SERVICES – CORPORATE, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE LIBERTY, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE MANAGEMENT OF CALIFORNIA, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE CHANCELLOR, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE GARDENS, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE LIVING COMMUNITIES, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE WELLINGTON, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE OPERATIONS, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE VEHICLE HOLDING, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BROOKDALE PROVIDENT MANAGEMENT, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

SUMMERVILLE AT HERITAGE PLACE, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

SUMMERVILLE AT BARRINGTON COURT LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

SUMMERVILLE AT FAIRWOOD MANOR, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

SUMMERVILLE AT COBBCO, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

SUMMERVILLE AT ROSEVILLE GARDENS LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

SUMMERVILLE AT HARDEN RANCH, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

SUMMERVILLE AT ATHERTON COURT LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD TWENTY-ONE PROPCO, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD TWENTY-ONE OPCO, INC.

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD TWENTY-ONE MANAGEMENT COMPANY

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD GARDENS-TARZANA PROPCO, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD PERSONAL ASSISTANCE SERVICES, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD CORONA LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD KETTLEMAN LANE LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD CORTONA PARK, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD FOLSOM LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD LODI, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD FM7 HOLDCO CA, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BKD ARBORS OF SANTA ROSA, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

BREA CITRUS HEIGHTS, LLC

Dated: 6/30/25

By: M. DOWNEY
Its: VP, LEGAL

APPROVED AS TO FORM ONLY:

Date: May 29, 2025

CROSNER LEGAL, P.C.

By: ______________________
Zachary Crosner
Jamie Serb
Sepideh Ardestani
Attorneys for Plaintiff Davenport

Date: ______________

CAPSTONE LAW APC

By: ______________________
Raul Perez
Roxanna Tabatabaeepour
Attorneys for Plaintiff Hernandez

Date: ______________

MESSRELLIAN LAW INC.

By: ______________________
Harout Messrellian
Attorneys for Plaintiff Torossian

Date: ______________

HAINES LAW GROUP, APC

By: ______________________
Paul K. Haines
Fletcher W. Schmidt
Attorneys for Plaintiff Garcia

Date: ______________

BIBIYAN LAW GROUP, P.C.

By: ______________________
David D. Bibiyan
Jeffrey Klein
Sarah Cohen
Attorneys for Plaintiff Blake

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APPROVED AS TO FORM ONLY:

Date: ____________________ **CROSNER LEGAL, P.C.**

By: ______________________________
Zachary Crosner
Jamie Serb
Sepideh Ardestani
Attorneys for Plaintiff Davenport

Date: 6/5/2025 **CAPSTONE LAW APC**

By: ______________________________
Raul Perez
Roxanna Tabatabaeepour
Attorneys for Plaintiff Hernandez

Date: ____________________ **MESSRELLIAN LAW INC.**

By: ______________________________
Harout Messrellian
Attorneys for Plaintiff Torossian

Date: ____________________ **HAINES LAW GROUP, APC**

By: ______________________________
Paul K. Haines
Fletcher W. Schmidt
Attorneys for Plaintiff Garcia

Date: ____________________ **BIBIYAN LAW GROUP, P.C.**

By: ______________________________
David D. Bibiyan
Jeffrey Klein
Sarah Cohen
Attorneys for Plaintiff Blake

APPROVED AS TO FORM ONLY:

Date: ____________________ **CROSNER LEGAL, P.C.**

By: ____________________
Zachary Crosner
Jamie Serb
Sepideh Ardestani
Attorneys for Plaintiff Davenport

Date: ____________________ **CAPSTONE LAW APC**

By: ____________________
Raul Perez
Roxanna Tabatabaeepour
Attorneys for Plaintiff Hernandez

Date: 6/6/2025 **MESSRELLIAN LAW INC.**

By: ____________________
Harout Messrellian
Attorneys for Plaintiff Torossian

Date: ____________________ **HAINES LAW GROUP, APC**

By: ____________________
Paul K. Haines
Fletcher W. Schmidt
Attorneys for Plaintiff Garcia

Date: ____________________ **BIBIYAN LAW GROUP, P.C.**

By: ____________________
David D. Bibiyan
Jeffrey Klein
Sarah Cohen
Attorneys for Plaintiff Blake

APPROVED AS TO FORM ONLY:

Date: ________________

CROSNER LEGAL, P.C.

By: ______________________________
Zachary Crosner
Jamie Serb
Sepideh Ardestani
Attorneys for Plaintiff Davenport

Date: ________________

CAPSTONE LAW APC

By: ______________________________
Raul Perez
Roxanna Tabatabaeepour
Attorneys for Plaintiff Hernandez

Date: ________________

MESSRELLIAN LAW INC.

By: ______________________________
Harout Messrellian
Attorneys for Plaintiff Torossian

Date: Jun 10, 2025

HAINES LAW GROUP, APC

By: ______________________________
Paul K. Haines
Fletcher W. Schmidt
Attorneys for Plaintiff Garcia

Date: ________________

BIBIYAN LAW GROUP, P.C.

By: ______________________________
David D. Bibiyan
Jeffrey Klein
Sarah Cohen
Attorneys for Plaintiff Blake

APPROVED AS TO FORM ONLY:

Date: ________________

CROSNER LEGAL, P.C.

By: ______________________________
Zachary Crosner
Jamie Serb
Sepideh Ardestani
Attorneys for Plaintiff Davenport

Date: ________________

CAPSTONE LAW APC

By: ______________________________
Raul Perez
Roxanna Tabatabaeepour
Attorneys for Plaintiff Hernandez

Date: ________________

MESSRELLIAN LAW INC.

By: ______________________________
Harout Messrellian
Attorneys for Plaintiff Torossian

Date: ________________

HAINES LAW GROUP, APC

By: ______________________________
Paul K. Haines
Fletcher W. Schmidt
Attorneys for Plaintiff Garcia

Date: 6/10/25

BIBIYAN LAW GROUP, P.C.

By: Vedang J. Patel
David D. Bibiyan
~~Jeffrey Klein~~
Sarah Cohen ; Vedang J. Patel
Attorneys for Plaintiff Blake

Date: July 1, 2025

LITTLER MENDELSON, PC

By: ______________________________
Shannon Boyce
Attorneys for Defendants

EXHIBIT 2

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Lillian Davenport, et al. v. Brookdale Senior Living Communities, Inc., et al.
San Joaquin County Superior Court, Case No. STK-CV-UOE-2023-9791

[NAME]
[ADDRESS]
[CITY], [STATE] [ZIP CODE]
XXX-XX-[LAST 4 SSN]

I. NOTICE OF PAGA SETTLEMENT

The San Joaquin County Superior Court (the "Court") has approved the PAGA Settlement Agreement ("Settlement") in the above-captioned lawsuit filed by Plaintiffs Lillian Davenport, Destiny Hernandez, Artin Torossian, Griselda Garcia, and Jalisa Monique Blake ("Plaintiffs") on behalf of themselves and all other aggrieved employees, including you.

In this lawsuit, Plaintiffs seek to recover civil penalties for alleged violations of a California law known as the Private Attorneys General Act ("PAGA"). Plaintiffs are acting as "private attorney generals" on behalf of the California Labor and Workforce Development Agency ("LWDA") and other employees of Defendants Emeritus Corporation; Brea Emeritus LLC; Emeritus Properties XVI, Inc.; Brookdale Senior Living Communities, Inc.; Brookdale Employee Services, LLC; Brookdale Employee Services – Corporate, LLC; Brookdale Liberty, LLC; Brookdale Management of California, LLC; Brookdale Chancellor, Inc.; Brookdale Gardens, Inc.; Brookdale Living Communities, Inc.; Brookdale Wellington, Inc.; Brookdale Operations, LLC; Brookdale Vehicle Holding, LLC; Brookdale Provident Management, LLC; Summerville at Heritage Place, LLC; Summerville at Barrington Court LLC; Summerville at Fairwood Manor, LLC; Summerville at Cobbco, Inc.; Summerville at Roseville Gardens LLC; Summerville at Harden Ranch, LLC; Summerville at Atherton Court LLC; BKD Twenty-One Propco, Inc.; BKD Twenty- One Opco, Inc.; BKD Twenty-One Management Company; BKD Gardens-Tarzana Propco, LLC; BKD Personal Assistance Services, LLC; BKD Corona LLC; BKD Kettleman Lane LLC; BKD Cortona Park, LLC; BKD Folsom LLC; BKD Lodi, LLC; BKD FM7 Holdco CA, LLC; BKD Arbors of Santa Rosa, LLC; and Brea Citrus Heights, LLC ("Defendants"). Plaintiffs allege that Defendants are liable for civil penalties under PAGA because of Defendants' failure to pay all statutory and minimum wages, failure to properly calculate and pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all wages due upon separation of employment, failure to furnish accurately itemized wage statements, failure to reimburse business expenses, failure to maintain payroll records, unlawful deductions, failure to pay all vested vacation time, failure to properly calculate and pay all sick pay, failure to provide one day's rest in seven, failure to provide suitable seating, failure to pay reporting time pay, failure to pay split shift premiums, failure to provide sufficient toilet facilities, failure to provide written notice of material employment information, failure to timely notify employees of potential COVID-19 exposure, requiring employees to patronize Defendants' business in the purchase of anything of value, failure to provide personnel file, failure to provide pay records, failure to provide suitable resting facilities, unlawful agreements, unlawful financial and criminal history inquiries, failure to provide a safe and healthful workplace, refusal to make payment, implementation of unlawful labor conditions, and failure to provide final paychecks at the location of discharge or where work was last performed, that arose during the PAGA Period. PAGA Aggrieved Employees other than Plaintiffs will not be releasing any underlying wage and hour claims through this settlement, only PAGA claims. PAGA Aggrieved Employees will not be provided with the opportunity to opt out of this PAGA settlement and release.

The Court has ***not*** ruled on Plaintiffs' claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiffs' claims. Defendants maintain that Plaintiffs' allegations are without merit, and enter into this Settlement with no admission of liability.

You are receiving this Notice because you are in the group of employees referred to as the "PAGA Aggrieved Employees," which is defined as: all of Defendants' current and former non-exempt employees in California who worked at any time during the PAGA Period (July 7, 2022 to **[PAGA APPROVAL DATE]**). The time period from July 7, 2022 through **[PAGA APPROVAL DATE]**is also known as the "PAGA Period."

II. CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENT

Each PAGA Aggrieved Employee is receiving a share of the Net Settlement Amount based on the proportionate number of pay periods worked by each PAGA Aggrieved Employee during the PAGA Period, by multiplying the PAGA Aggrieved Employees' 25% portion of the Net Settlement Amount by the total pay periods worked by all PAGA Aggrieved Employees during the PAGA Period, multiplied by the number of pay periods worked by that individual PAGA Aggrieved Employee. All PAGA Aggrieved Employees will be entitled to payment for at least one pay period.

III. RELEASE

On **[PAGA APPROVAL DATE]**, the Court approved the parties' Settlement Agreement. By operation of the Settlement's terms, the PAGA Aggrieved Employees will release and discharge Defendants, together with any of their respective predecessors, current and former parents, subsidiaries, and affiliated entities and, with respect to each such entity, each of their respective officers, directors, employees, shareholders, owners, members, contractors, landlords, joint venturers, partners, insurers, brokers, attorneys, representatives, agents, successors, and assigns (the "Released Parties") from any and all liability for all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaints of the Actions and Plaintiffs' PAGA Notices including, e.g., (1) failure to pay all statutory and minimum wages; (2) failure to properly calculate and pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to pay all wages due upon separation of employment; (6) failure to furnish accurately itemized wage statements; (7) failure to reimburse business expenses; (8) failure to maintain payroll records; (9) unlawful deductions; (10) failure to pay all vested vacation time; (11) failure to properly calculate and pay all sick pay; (12) failure to provide one day's rest in seven; (13) failure to provide suitable seating; (14) failure to pay reporting time pay; (15) failure to pay split shift premiums; (16) failure to provide sufficient toilet facilities; (17) failure to provide written notice of material employment information; (18) failure to timely notify employees of potential COVID-19 exposure; (19) requiring employees to patronize Defendants' business in the purchase of anything of value; (20) failure to provide personnel file; (21) failure to provide pay records; (22) failure to provide suitable resting facilities; (23) unlawful agreements; (24) unlawful financial and criminal history inquiries; (25) failure to provide a safe and healthful workplace; (26) refusal to make payment; (27) implementation of unlawful labor conditions; and (28) failure to provide final paychecks at the location of discharge or where work was last performed, that arose during the PAGA Period (the "PAGA Released Claims").

This release is solely limited to civil penalties that are recoverable under PAGA. PAGA Aggrieved Employees other than Plaintiffs will not be releasing any underlying wage and hour claims through this settlement, only PAGA claims.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE.

You may contact the Court-approved Settlement Administrator, Phoenix Class Action Administration Solutions, at **[ADMINISTRATOR INFO]** with any questions.

Settlement checks will be null and void one hundred eighty (180) days after issuance if not deposited or cashed. Any check not deposited or cashed within one hundred eighty (180) days of mailing to a PAGA Aggrieved Employee shall be transferred to the California State Controller's Office for Unclaimed Property in the name of each PAGA Aggrieved Employee who failed to cash a Settlement Payment check prior to the void date. **If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.**

EXHIBIT 3

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

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

June 29, 2023

VIA PAGA ONLINE FILING ONLY:
California Labor & Workforce Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA PAGA ONLINE FILING ONLY
Notice to Division of Occupational Safety and Health Via PAGA Online Filing
Attn: Division of Occupational Safety and Health (Cal OSHA)
1515 Clay Street, St. 1901
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL:

CSC - Lawyers Incorporating Service
Agent for Service of Process for:
Brookdale Senior Living Communities, Inc.
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Brookdale Senior Living Communities, Inc.
Attn: CA Registered Agent Authorized Employees: Becky DeGeorge, Koy Saechao, Lai Saevang, Nicole Stauss, Jenn Bautista, Trudy Desbiens, Rebecca Vang, Wendy Harris, Melissa Dekoven, Carolyn Valle, Kaci Ransom, Kelli Shortte, Annette Kuhlman, Brejet Stephens, Crystal Chapman, Janette McIntyre, Jerome Suarez, Samantha Wiltz, and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

CSC - Lawyers Incorporating Service
Agent for Service of Process for:
BKD Personal Assistance Services, LLC
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

BKD Personal Assistance Services, LLC
Attn: CA Registered Agent Authorized Employees: Becky DeGeorge, Koy Saechao, Lai Saevang, Nicole Stauss, Jenn Bautista, Trudy Desbiens, Rebecca Vang, Wendy Harris, Melissa Dekoven, Carolyn Valle, Kaci Ransom, Kelli Shortte, Annette Kuhlman, Brejet Stephens, Crystal Chapman, Janette McIntyre, Jerome Suarez, Samantha Wiltz, and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

BKD Personal Assistance Services, LLC
Attn: Human Resources / Legal Department
111 Westwood Place Suite 400
Brentwood, TN 37027

Brookdale Senior Living Communities, Inc.
Attn: Human Resources / Legal Department
111 Westwood Place Suite 400
Brentwood, TN 37027

CSC - Lawyers Incorporating Service
Agent for Service of Process for:
Emeritus Corporation
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Emeritus Corporation
Attn: CA Registered Agent Authorized Employees: Becky DeGeorge, Koy Saechao, Lai Saevang, Nicole Stauss, Jenn Bautista, Trudy Desbiens, Rebecca Vang, Wendy Harris, Melissa Dekoven, Carolyn Valle, Kaci Ransom, Kelli Shortte, Annette Kuhlman, Brejet Stephens, Crystal Chapman, Janette McIntyre, Jerome Suarez, Samantha Wiltz, and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Emeritus Corporation
Attn: Human Resources / Legal Department
111 Westwood Place Suite 400
Brentwood, TN 37027

BKD Personal Assistance Services, LLC
Attn: Human Resources / Legal Department
380 S. Anaheim Hills Road
Anaheim Hills, California 92807

Randolph de Leon
Agent for Service of Process for:
Acclaim Home Care Inc.
754 West Boyd Road
Pleasant Hill, California 94523

Acclaim Home Care, Inc.
Attn: Human Resources / Legal Department
4340 Redwood Highway A14
San Rafael, California 94903

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To:	California Labor and Workforce Development Agency; Division of Occupational Safety and Health; Brookdale Senior Living Communities, Inc.; Emeritus Corporation; BKD Personal Assistance Services, LLC; and Acclaim Home Care Inc.
Date:	June 29, 2023
Subject:	*Lillian Davenport v. Brookdale Senior Living Communities, Inc., et. al.*

Introduction

This office represents PLAINTIFF, Lillian Davenport (hereinafter "PLAINTIFF") in connection with PLAINTIFF's claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Brookdale Senior Living Communities, Inc.; Emeritus Corporation; BKD Personal

Assistance Services, LLC; and Acclaim Home Care Inc. (hereinafter, these entities and their managing agents are collectively referred to as "DEFENDANTS"). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice ("NON-EXEMPT AGGRIEVED EMPLOYEES") and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice ("EXEMPT AGGRIEVED EMPLOYEES"), hereby gives written notice ("NOTICE") of PLAINTIFF's claims against DEFENDANTS. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency ("LWDA") and the Division of Occupational Safety and Health and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate PLAINTIFF's reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS are interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF's claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF's intent to seek civil penalties against DEFENDANTS. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.,* (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.7, 245-248.6, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, 6400-6404, 6406-6407, 6409.6, and all applicable Wage Orders.

The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, DEFENDANTS, and each of them, maintain the same principal place of business and/or agent for service of process as provided to the California Secretary of State and/or share some of the same attorneys and/or human resources personnel to oversee employment-related matters. By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, were an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at senior housing, retirement homes, communities, living spaces, offices, facilities and/or other location(s) in California, including but not limited to the senior housing, retirement homes, communities, living spaces, offices, facilities in Lodi, California. DEFENDANTS, through its various locations serve the health care industry.[1] Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of caregiver and/or a similar title(s) and/or position(s) from on or around April 11, 2022, through on or around May 4, 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Lodi, California location(s). PLAINTIFF regularly worked at least eight (8) to eleven (11) hours per day, at least five (5) to six (6) days per week.

[1] *See* https://www.brookdale.com/en/locations/california.htm. Last visited on June 29, 2023.

DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; (12) conducted and continue to conduct illegal criminal and/or financial background checks as a condition of PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continue to fail to provide suitable seating and suitable resting facilities; (15) failed and continue to fail to pay NON-EXEMPT AGGRIEVED EMPLOYEES all reporting time pay wages; (16) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment; and (17) fails and continues to fail to provide a safe and healthful place of employment for NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which allowed meal periods were provided each day.

Based on information and belief, DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of DEFENDANTS' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, DEFENDANTS further failed, and continue to fail, to record the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, DEFENDANTS further failed and continue to fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, DEFENDANTS failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.[2]

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

<u>Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432</u>:

<u>Time and Pay Records</u>

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar ($750) penalty from the employer. Lab. Code section 226(f).

<u>Personnel Records</u>

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar ($750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, DEFENDANTS failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through counsel, sent a written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid*. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid*. Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra,* 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra,* 53 Cal.4th 1004.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED

EMPLOYEES were frequently interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

For example, PLAINTIFF was frequently interrupted during unpaid meal periods due to the need to respond to work-related communications from her supervisor(s) and/or complete other work tasks. Also, based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were restricted to the worksite premises during purportedly off-duty meal periods and as such were not relieved of all duties and DEFENDANTS' control during unpaid, purportedly off-duty meal periods, resulting in meal period law violations and DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

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

For example, when PLAINTIFF worked shifts lasting longer than ten (10) and/or twelve (12) hours, PLAINTIFF was frequently not afforded a full thirty-minute second meal period. For example, based on information and belief, PLAINTIFF was frequently interrupted during any second meal period, had her meal period cut short, and/or was required to work through any second meal period completely, yet DEFENDANTS did not pay PLAINTIFF any and/or all meal period premiums for these missed and/or otherwise improper meal periods, in violation of California's meal period law.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, DEFENDANTS failed to keep accurate records of the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, DEFENDANTS did not have a compliant written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra,* 53 Cal.4th 1004.

PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.[3] DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

<u>Rest Period Violations</u>: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v Restaurant Corp. v. Superior Court,* 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* At 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.,* (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. Id. At 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). Id.; see also, *Bufil v. Dollar Fin. Grp.*, Inc., (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.").

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor

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

instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were frequently unable to take compliant rest periods due to PLAINTIFF's need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises.

For example, PLAINTIFF was rarely, if ever, afforded a compliant rest period during PLAINTIFF's employment due to the need to complete assigned job duties, including but not limited to, respond to work-related communications from her supervisor, attend to residents, and/or complete other work tasks.

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

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

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.[4]

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

DEFENDANTS' locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS' facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a suitable breakroom). As a result, NON-EXEMPT AGGRIEVED EMPLOYEEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises which are not designated or reserved for rest, such as their personal vehicles.

DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

DEFENDANTS' failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee …. not less than the applicable minimum wage for all hours worked in the payroll period…" The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." *See* §2 of all applicable Wage

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

Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon…" *Cal. Lab. Code* § 1194.2.

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS' automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, based on information and belief, DEFENDANTS have a policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to perform off-the-clock work outside of scheduled shift times and/or prior to clocking in for the start of their shifts and/or after clocking out for the end of their shifts, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-related phone calls and/or messages they received to their phones and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, at times, PLAINTIFF's supervisor(s) called PLAINTIFF on her personal cell phone / mobile device after hours/outside of PLAINTIFF's scheduled shift times to discuss work-related matters, resulting in at least approximately five (5) to ten (10) minutes of off-the-clock work during most if not all of these numerous off-the-clock work-related calls. PLAINTIFF was not compensated for this off-the-clock work, including but not limited to, time spent reviewing work-related messages and/or time spent responding to work-related phone calls/messages/discussing work-related matters outside of her scheduled shift times, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations. For example, DEFENDANTS required PLAINTIFF to attend off-the-clock work-related meetings after hours/outside of PLAINTIFF's scheduled shift times. This time spent under DEFENDANTS' control, including but not limited to, time spent attending work-related meetings, was not recorded and not compensated, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF, among other violations of the Labor Code described herein.

Based on further information and belief, DEFENDANTS' electronic employee time-keeping system/app at times malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate the system/app prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in consistent off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum wages.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment, safety equipment and/or uniforms (e.g., gloves and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required after working at their scheduled facility location and/or at one client's home to cover a shift and/or work a second shift at another of DEFENDANTS' facilities/locations and/or at a second client's home but were not compensated for the time spent driving and/or traveling to the second facility, client's home and/or second location resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES also were required to perform off-the-clock work duties at home/remotely, such as but not limited to, completing trainings/continued education courses and/or reviewing policies and/or other documents remotely as mandated by DEFENDANTS.

Moreover, based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES split shift premium wages when they worked split shifts during the relevant period. For example, based on information and belief, at times, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' work schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday…). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment). DEFENDANTS also failed to separately itemize these split shift premium wages on PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on the pay stub provided to the employee, and it should be shown as a separate category such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc. DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements. Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever their work schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday…).

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

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

DEFENDANTS' failure to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.[5]

<u>Overtime Violations</u>: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid*.

Based on information and belief, DEFENDANTS violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES working as in-home care givers typically spent more than twenty percent of their shifts performing housekeeping and/or other non-personal-attendant duties, such as but not limited to, grocery shopping, mopping

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[5] See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "<u>[i]n addition to any other civil penalties provided by law</u>, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid").

floors, cleaning bathrooms, watering plants, doing laundry, folding clothes, making beds, among other non-personal attendant job duties. The remainder of their shifts were typically spent attending to the patient(s)/client(s).

Based on information and belief, DEFENDANTS failed and continue to fail to pay a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Additionally, DEFENDANTS also violated California's overtime laws as to those NON-EXEMPT AGGRIEVED EMPLOYEES, that were subject to an Alternative Workweek Schedule (AWS).

Based on information and belief, DEFENDANTS adopted an Alternative Workweek Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected and/or implemented in accordance with the requirements of California law and/or DEFENDANTS failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws, including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

(C) Election Procedures Election procedures for the adoption and repeal of alternative
workweek schedules require the following: (1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another. (2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or

a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non- English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. (7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election. (8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek.

No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this paragraph shall be subject to Labor Code § 98 et seq.

On information and belief, PLAINTIFF alleges that DEFENDANTS failed to comply with the above procedures, and thus, failed to properly institute an alternative workweek for the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative workweek schedule. Based on information and belief, DEFENDANTS also failed to report the results to the

Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.

Moreover, to the extent there was an AWS that was properly adopted, DEFENDANTS violated California's overtime laws as to NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the agreed upon AWS. Under the relevant Wage Order, "If an employer… requires an [AWS] employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours… for the day the employee is required to work the reduced hours." See Section 3 of all applicable Wage Orders. Based on information and belief, at times during PLAINTIFF's employment by DEFENDANTS, Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS, were sent home early and/or worked less hours than those that were scheduled under the AWS. On such shortened shifts, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to overtime pay at 1.5 times the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES their base rate for all hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section 1198. As such, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS were also deprived of all owed overtime wages when required to work shortened shifts.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.[6]

<u>Violation of California Labor Code §§ 245-248.5</u>: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF

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

and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statements.

Based on information and belief, DEFENDANTS failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

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

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

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

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

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

DEFENDANTS violated and continue to violate Labor Code section 216 by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.[7]

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a

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

social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As DEFENDANTS failed to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.,* (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid. For example, based on information and belief, at times, DEFENDANTS' issued wage statements to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES containing payment for hours worked during previous pay periods, yet EMPLOYER did not include the inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with.

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

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

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

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

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

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief DEFENDANTS made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYES paychecks during the relevant period including but not limited to, deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty…for each failure to pay each employee").

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise

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[8] See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Reporting Time Pay Violations:
Section 5 of all applicable IWC Wage Orders, provides as follows:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to pay all reporting time wages to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Violation of California Day of Rest Law
Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" their employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, DEFENDANTS have and continue to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

<u>Seating Violations</u>: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

> (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
>
> (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, DEFENDANTS failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.[9]

<u>Standard Conditions of Labor Violations:</u> Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage

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

Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, seating, suitable resting facilities, reporting time pay, split shift premiums, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:
California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

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

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.[10]

<u>Violation of Labor Code Section 208:</u>
Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

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

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

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

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b). Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See* Cal. Lab. Code § 2804.

Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, use of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' personal mobile phones, data plan usage and charges, use of personal computer devices and/or costs associated with the purchase and/or maintenance of work uniforms/clothing, shoes, safety and/or protective gear (e.g., face masks and/or gloves). For example, based on information and belief NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES frequently received work-related calls and/or messages to their personal phone from managers and/or supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, regarding scheduling/other work tasks, yet were not provided any and/or full reimbursement by DEFENDANTS for these business expenses. For example, at times, PLAINTIFF's supervisor(s) called PLAINTIFF on her personal cell phone / mobile device after hours/outside of PLAINTIFF's scheduled shift times to discuss work-related matters, however, DEFENDANTS did not provide PLAINTIFF with any reimbursement for this business use of PLAINTIFF's personal cell phone.

Based on further information, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles for work, including but not limited to, for traveling between DEFENDANTS' facilities/locations and/or between clients' homes/assigned locations for work without reimbursing them for all vehicle expenses they incurred in connection therewith, including but not limited to, cost of fuel, vehicle wear and tear, and/or mileage.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES also were required to use and did use personal devices to perform work duties at home, such as but not limited to, completing trainings/certifications/recertifications/continued education courses and/or reviewing policies and/or other documents remotely as mandated by DEFENDANTS.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to work remotely, including but not limited to, from their homes. As a result of working from home, including but not limited to, to attend work-related meetings, complete trainings and/or continuing education courses, review policies and/or other documents and/or complete other work tasks remotely, NON-EXEMPT AGGRIEVED EMPLOYEES were required to use their home internet, electricity, and other utilities in the discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue to lack a policy to reimburse employees who regularly increased utility expenses as a result of working from home. NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' increased utility and internet expenses were expenses for which DEFENDANTS were required to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES a reasonable percentage based on their required business use because said expenses were necessarily incurred by NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES as a direct consequence of the discharge of their duties of employment.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT

AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:
Unlawful Agreements
Labor Code section 432.5 provides that "no employer…shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer…to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

Based on information and belief, DEFENDANTS ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq*. and 15 U.S.C. section 1681, *et seq*., including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code section 432.5.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to DEFENDANTS to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, DEFENDANTS knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA '"…is a representative action on behalf of the state'" *Kim v Reins Int'l California, Inc.,* (2020) 9 Cal. 5^{th} 73, 86-87. It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4^{th} 348, 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int'l California, Inc.,* (2020) 9 Cal. 5^{th} 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action … is a representative action on behalf of the state.'")

Upon information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.
As such, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Failure to Provide a Safe and Healthful Workplace: Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the California Occupational Safety and Health Act ("Cal OSHA"), employers must maintain a safe and healthful place of employment.

Specifically, Labor Code section 6400, requires the following:

> (a) Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein…

Labor Code section 6401 provides as follows:

> Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6402 prohibits the following:

> No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Similarly, Labor Code section 6404 provides as follows:

> No employer shall occupy or maintain any place of employment that is not safe and healthful.

In addition to the above, Labor Code section 6403 requires that employees provide safety devices to their employees. Labor Code section 6403 states:

> No employer shall fail or neglect to do any of the following:
> (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
> (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
> (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Similarly, Labor Code section 6406(d) states the following:

> No person shall do any of the following … (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Finally, Labor Code section 6407 provides:

> Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Moreover, Labor Code section 6409.6 sets forth the actions an employer (or representative of employer) must take within one business day of receiving notice of potential exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

At all relevant times, DEFENDANTS employed PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-

6404, 6406, and 6407. At all relevant times, DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and/or provide reasonable access to sanitation facilities (including, but not limited to, toilet facilities) and/or otherwise comply with sanitation standards reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times DEFENDANTS had a policy and practice of requiring or permitting employees to go or be in in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of failing or neglecting to: provide and use safety devices and/or provide reasonable access to sanitation facilities (e.g., toilet facilities) and/or otherwise comply with sanitation standards and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403.

PLAINTIFF is informed and believes and thereon alleges that these failures include, without limitation, failing to implement and/or effectively administer a proper injury and illness prevention program; failing to disinfect time clocks and/or other surfaces after use by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate protection equipment (e.g., face masks) to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate distance in working conditions between PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with adequate and readily accessible sanitation facilities, including but not limited to, washing facilities and/or toilet facilities and/or otherwise failing to comply with the sanitation standards as set forth in including but not limited to, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3364, 3365 and 3366.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide adequate and readily accessible sanitation facilities, and to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, a regular schedule for servicing, cleaning, and supplying for any sanitation facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets for use for each employee.

Based on further information and belief, to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, DEFENDANTS failed to maintain facilities that complied with California law, including without limitation, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3203, 3364, 3365 and 3366.

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Moreover, at all relevant times, DEFENDANTS had a policy and practice of failing to give sufficient, adequate and proper notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED

EMPLOYEES and/or EXEMPT AGGREIVED EMPLOYEES of the COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is informed and believes that numerous employees contracted COVID-19 during the relevant time periods, but that DEFENDANTS failed to provide notice to employees. Based on further information and belief, DEFENDANTS do not or did not keep adequate records of written notifications required in subdivision (a) for a period of at least three years.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received notice of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and/or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state or local laws, including but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing within one business day after DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to COVID-19 to notify PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of the subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

At all relevant times, DEFENDANTS had and have a policy and practice of failing to notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19 related order to isolate provided by a public health official; or died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and 6432.

PLAINTIFF is informed and believes , and based thereon alleges that DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets for use by each employee.

PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS violated the Labor Code sections described herein, including without limitation, for failure to: furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19 pursuant to California and local laws.

Based on information and belief, DEFENDANTS failed to protect NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES from exposure to COVID-19 due to, including but not limited to, failing to maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address hazards related to the COVID-19 virus.

As such, DEFENDANTS failed to comply with the occupational safety and health standards, failed to do everything reasonably necessary to protect the health and safety of employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices necessary to maintain a safe and healthful workplace.

As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES and is subject to civil penalties.

Conclusion

DEFENDANTS have violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code. Likewise, PLAINTIFF requests that the Division of Occupational Safety and Health investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, PLAINTIFF requests that the agency and division inform PLAINTIFF if they do not intend to investigate these violations so that PLAINTIFF may file a lawsuit with respect to the allegations discussed in this NOTICE.

If the LWDA and/or the Division of Occupational Safety and Health elect not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco, Esq.
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866. 276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

Kiara Bramasco

Kiara Bramasco, Esq.
CROSNER LEGAL, PC

CROSNER LEGAL
PUBLIC INTEREST RIGHTS

Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov> Thu, Jun 29, 2023 at 10:36 AM
To: "prelit@crosnerlegal.com" <prelit@crosnerlegal.com>

6/29/2023

LWDA Case No. LWDA-CM-965195-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Lillian Davenport
Employer: Brookdale Senior Living Communities, Inc.
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT 4

EXHIBIT 5

Lillian Davenport v. Brookdale Senior Living Communities, et. al.
(San Joaquin County Superior Court Case No. STK-CV-2023-0009791)

Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Sepideh Ardestani	Kiara Bramasco	Branden Hamilton
Pre-filing Case Investigation	6.2	0.0	0.0	4.8	5.7
Pleadings and Law and Motion	5.5	0.3	3.5	4.9	0.8
Discovery and Post-Filing Investigation	8.8	10.3	12.5	0.0	0.0
Court Appearances	0.0	0.0	4.2	0.0	0.0
Case Management; Litigation Strategy & Analysis	33.4	52.1	44.6	0.0	0.0
Mediation and Settlement	7.5	10.2	12.5	0.0	0.0
Total Hours	61.4	72.9	77.3	9.7	6.5
Hourly Rate	$850	$800	$800	$650	$600
Lodestar	**$52,190.00**	**$58,320.00**	**$61,840.00**	**$6,305.00**	**$3,900.00**

Total Hours: 227.8
Total Lodestar: $182,555.00