

Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Joseph D. Parsons (SBN 340074)
Joey.Parsons@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Roberto Lizama

Electronically FILED by
Superior Court of California,
County of Los Angeles
8/11/2023 11:22 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Nunez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

LIFE ALERT EMERGENCY
RESPONSE, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 23STCV19179

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

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

3 JURISDICTION AND VENUE

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

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

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

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

THE PARTIES

6. Plaintiff Roberto Lizama is a resident of Los Angeles, in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately December 2022 to March 2023. Plaintiff worked as a Unit Programmer at Defendants' location in Encino, California. Plaintiff typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$17.00 per hour. Plaintiff's job duties included, without limitation, inspecting, testing, updating, and programming Life Alert medical alert system units ("alert units").

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with a "Mutual Agreement to Arbitrate Claims" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically, on information and belief, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including

1 Employee Handbook Acknowledgement of Understanding, Safety Manual Orientation
2 Worksheet, Confidentiality Agreement, and Memo Re: Telephone Etiquette, among other
3 documents. Also, employees did not have a meaningful opportunity to negotiate the terms of
4 the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to
5 sign on a take-it or leave-it basis, along with all of the other on-boarding documents. Further,
6 Defendants did not set forth in the agreement or otherwise provide employees with the rules
7 which will govern the arbitration, instead forcing employees to seek this information out on
8 their own ("The current AAA Employment Arbitration Rules may be found at
9 www.adr.org/employment or through Life Alert's Human Resources department.")

10 8. LIFE ALERT EMERGENCY RESPONSE, INC. was and is, upon information
11 and belief, a California corporation, and at all times hereinafter mentioned, an employer
12 whose employees are engaged throughout this county, the State of California.

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

17 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
18 were the partners, agents, owners, or managers of LIFE ALERT EMERGENCY RESPONSE,
19 INC. at all relevant times.

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

28 12. At all relevant times, Defendants, and each of them, ratified each and every act

1 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
2 and abetted the acts and omissions of each and all the other Defendants in proximately causing
3 the damages herein alleged.

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

7 **PAGA REPRESENTATIVE ALLEGATIONS**

8 14. Defendants operate a personal emergency response and home medical alert
9 system. Upon information and belief, Defendants maintain a single, centralized Human
10 Resources (HR) department at their corporate headquarters in Encino, California for all non-
11 exempt, hourly paid employees working for Defendants in California, which is responsible for
12 the recruiting and hiring of new employees, and communicating and implementing
13 Defendants' company-wide policies, including timekeeping policies and meal and rest period
14 policies, to employees throughout California.

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

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

1 manner throughout the State of California, regardless of the manner in which each employee's
2 employment ends.

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

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

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

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

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

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

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

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

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

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

26 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 timely payment of wages during their employment. In violation of the California Labor Code,

1 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
2 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
3 premiums, within permissible time periods.

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

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 receive reimbursement for all business-related expenses and costs they incurred during the
13 course and scope of their employment and that they did not receive reimbursement of
14 applicable business-related expenses and costs incurred.

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

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

27 32. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
28 person who was employed by the alleged violator and against whom one or more of the

1 alleged violations was committed.”

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

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

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

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

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing to the LWDA and by certified mail to the employer of the
3 specific provisions of the California Labor Code alleged to have been
4 violated (other than those listed in Section 2699.5), including the facts
5 and theories to support the alleged violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(c) and any employer response to that notice shall be
8 accompanied by a filing fee of seventy-five dollars (\$75).
- 9 (c) The employer may cure the alleged violation within thirty-three (33)
10 calendar days of the postmark date of the notice. The employer shall
11 give written notice by certified mail within that period of time to the
12 aggrieved employee or representative and the agency if the alleged
13 violation is cured, including a description of actions taken, and no civil
14 action pursuant to Section 2699 may commence. If the alleged violation
15 is not cured within the 33-day period, the employee may commence a
16 civil action pursuant to Section 2699.

17 36. On June 6, 2023, Plaintiff provided written notice by online filing to the
18 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
19 Code alleged to have been violated, including facts and theories to support the alleged
20 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
21 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
22 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
23 Plaintiff PAGA Case Number LWDA-CM-960228-23. A true and correct copy of Plaintiff's
24 written notice to the LWDA and Defendants dated June 6, 2023, is attached hereto as "Exhibit
25 1."

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

1 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
2 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
3 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
4 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

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

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

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

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

2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

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

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants’ failure to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other non-party Aggrieved Employees, as set forth below;
- (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and

1 the applicable IWC Wage Order for Defendants' failure to compensate
2 Plaintiff and other non-party Aggrieved Employees with at least
3 minimum wages for all hours worked, as set forth below;

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

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

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

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

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

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

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

26 **FAILURE TO PAY OVERTIME**

27 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

28 46. Labor Code section 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
2 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
3 shall be the . . . standard conditions of labor for employees. The employment of any employee
4 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

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

19 50. California Labor Code section 510 codifies the right to overtime compensation
20 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
21 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
22 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
23 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
24 in a day on the seventh (7th) day of work.

25 51. During the relevant time period, Defendants willfully failed to pay all overtime
26 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
27 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
28 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)

1 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
2 not recorded.

3 52. First, Defendants had, and continue to have, a company-wide policy and/or
4 practice of discouraging and impeding Plaintiff and other non-party Aggrieved Employees
5 from recording hours worked that were outside of their scheduled shifts in order to limit the
6 amount of overtime employees could accrue. On information and belief, this policy of
7 limiting overtime, coupled with Defendants' assignment of heavy workloads and productivity
8 quotas (*see infra*), led Plaintiff and other non-party Aggrieved Employees to work off-the-
9 clock outside of their scheduled shift times in order to complete their assigned tasks. Because
10 Defendants discouraged overtime accrual by, among other things, requiring employees to
11 obtain express permission from Defendants' supervisors for overtime hours, Plaintiff and
12 other non-party Aggrieved Employees were required to complete assigned tasks outside of
13 their scheduled shifts without being compensated for the time they worked.

14 53. For example, whenever Plaintiff reported early to work, he would begin his
15 typical daily tasks of scanning alert units and preparing shipping boxes spending
16 approximately 10-30 minutes completing these tasks. As a further example, approximately
17 twice per week, Plaintiff worked after clocking out from his shifts completing closing duties
18 such as sweeping the floors and taking out trash. Plaintiff and other non-party Aggrieved
19 Employees were not able to record this time spent working due to instruction from
20 Defendants' management that any overtime was strictly prohibited and had to be approved.
21 Thus, Defendants failed to track all of the time that employees spent performing work-related
22 tasks outside of their shifts, and Plaintiff and other non-party Aggrieved Employees received
23 no compensation for this time.

24 54. Further, because Defendants provided employees with only one (1) access point
25 to their timekeeping system, other non-party Aggrieved Employees would often have to wait
26 to clock in for the start of their shifts, because there would be a line of other employees
27 clocking in. For example, other non-party Aggrieved Employees would report to work at the
28 start of their scheduled shifts, but would be required to wait in line for 3-5 minutes under

1 Defendants' control until employees in front of them in line clocked in, time for which they
2 were not paid.

3 55. Second, Defendants had, and continue to have, a company-wide policy and/or
4 practice of assigning heavy workloads and enforcing productivity quotas, which resulted in a
5 failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal
6 period coverage. On information and belief, Defendants also failed to schedule and/or adhere
7 to a schedule for meal periods, which further caused Plaintiff and other non-party Aggrieved
8 Employees to not be relieved of their duties for compliant meal periods. As a result, Plaintiff
9 and other non-party Aggrieved Employees were not afforded uninterrupted thirty (30) minute
10 meal periods during shifts in which they were entitled to receive meal periods. For example,
11 Plaintiff would be required to program 100 alert units every day, which caused him to work
12 through his meal periods due to the heavy workload. Thus, Plaintiff and other non-party
13 Aggrieved Employees worked through meal periods and/or had meal periods cut short or
14 interrupted in order to handle their workloads. Defendants did not compensate Plaintiff and
15 other non-party Aggrieved Employees for the time they spent working off the clock during
16 meal periods.

17 56. Further, on information and belief, because Defendants frowned upon
18 employees accruing meal period penalties, Defendants expected Plaintiff and other non-party
19 Aggrieved Employees to clock out for meal periods to reflect compliant meal periods and/or
20 recorded compliant meal periods on their behalf, even when they did not receive a compliant
21 meal period, in order to strictly limit meal penalties that Defendants would otherwise owe.
22 Thus, Plaintiff and other non-party Aggrieved Employees performed work during meal
23 periods for which they were not paid.

24 57. Defendants knew or should have known that, as a result of these company-wide
25 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
26 their assigned duties off-the-clock before and after their shifts and during meal periods, and
27 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
28 and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or

1 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
2 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
3 overtime wages for all of the overtime hours they actually worked.

4 58. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
5 correct overtime rates for the recorded overtime hours that they generated. In addition to an
6 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
7 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
8 California Labor Code, on information and belief, Defendants failed to incorporate all
9 remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation
10 of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,
11 during times when other non-party Aggrieved Employees worked overtime and received these
12 other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime
13 rate than required.

14 59. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
15 the balance of overtime compensation as required by California law, violates the provisions of
16 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
17 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
18 558 and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY MINIMUM WAGES**

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

21 60. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
22 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
23 to be paid to employees, and the payment of a wage less than the minimum so fixed is
24 unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time
25 during which an employee is subject to the control of an employer, and includes all the time
26 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
27 Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

28 61. As stated, during the relevant time period, due to Defendants' restrictions on

1 overtime accrual, Defendants systematically failed to pay Plaintiff and other non-party
2 Aggrieved Employees for actual hours worked before and after scheduled shifts, because these
3 hours were not appropriately recorded. As a result, Plaintiff and other non-party Aggrieved
4 Employees were required to complete various tasks off-the-clock, before and after their
5 scheduled shifts, such as scanning alert units, preparing shipping boxes, sweeping floors,
6 taking out trash, and/or waiting in line to clock-in at an inadequate number of timekeeping
7 machines.

8 62. Additionally, as set forth above, due to Defendants' uniform practices of
9 assignment of heavy workloads and enforcement of productivity quotas, failure to schedule
10 and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage,
11 Plaintiff and other non-party Aggrieved Employees were impeded from taking all
12 uninterrupted meal periods to which they were entitled and were required to work off-the-
13 clock. Further, to limit the meal penalties that Defendants would otherwise owe, Defendants
14 expected Plaintiff and other non-party Aggrieved Employees to clock out for meal periods to
15 reflect compliant meal periods and/or recorded complaint meal periods on their behalf, but
16 required Plaintiff and other non-party Aggrieved Employees to continue working, time for
17 which they were not paid.

18 63. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
19 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
20 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
21 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
22 1194, 1197, and 1198.

23 64. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
24 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
25 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

27 //

28 //

FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

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

66. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

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

69. First, as stated, Defendants had, and continue to have, company-wide policies and/or practices of assigning heavy workloads and productivity quotas, discouraging employees from incurring overtime, and failing to schedule and/or adhere to a schedule for meal periods, which resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely meal periods to which they were entitled. As a result, Plaintiff and other non-party Aggrieved Employees were forced to work

1 in excess of five (5) hours before taking a meal period, and, at times, had their meal periods
2 interrupted and/or had to forgo their meal periods altogether. For example, as stated, on a
3 regular basis, Plaintiff was required to work through all or part of his meal periods in order to
4 meet Defendants' productivity expectation that he program 100 alert units per day. Further,
5 Plaintiff took his meal periods late nearly every shift, after having worked in excess of five (5)
6 hours into his shift, in order to complete his assigned duties.

7 70. Second, as stated above, on information and belief, because Defendants
8 frowned upon employees accruing meal period penalties, Defendants' management expected
9 Plaintiff and other non-party Aggrieved Employees to clock out for meal periods and/or
10 recorded compliant meal periods on their behalf to reflect compliant meal periods, regardless
11 of whether they had received a compliant meal period, in order to limit meal penalties that
12 would need to be paid by Defendants.

13 71. Third, Defendants did not provide other non-party Aggrieved Employees with
14 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
15 day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period
16 waivers on days that they were entitled to meal periods and were not relieved of all duties.

17 72. At all times mentioned herein, Defendants knew or should have known that, as
18 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
19 from being relieved of all duties and required to perform some of their assigned duties during
20 meal periods. Defendants further knew or should have known that they did not pay Plaintiff
21 and other non-party Aggrieved Employees meal period premiums when meal periods were
22 late, interrupted, shortened, and/or missed.

23 73. Furthermore, Defendants engaged in a company-wide practice and/or policy of
24 not paying all meal period premiums owed when compliant meal periods are not provided.
25 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
26 have not received premium pay for all missed, late, and interrupted meal periods.
27 Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees
28 premium pay for missed, late, and interrupted meal periods, Defendants did not pay other non-

1 party Aggrieved Employees the correct rate of pay for premiums because Defendant
2 systematically failed to include all forms of compensation such as incentive pay,
3 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

4 74. Defendants' conduct violates the applicable IWC Wage Order, and California
5 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 558 and/or 2699(a), (f), and (g).

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

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

10 75. At all relevant times herein set forth, the applicable IWC Wage Order and
11 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
12 non-party Aggrieved Employees' employment by Defendants.

13 76. At all relevant times, the applicable IWC Wage Order provides that "[e]very
14 employer shall authorize and permit all employees to take rest periods, which insofar as
15 practicable shall be in the middle of each work period" and that the "rest period time shall be
16 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
17 hours or major fraction thereof" unless the total daily work time is less than three and one-half
18 (3 ½) hours.

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

27 78. Pursuant to the applicable IWC Wage Order and California Labor Code section
28 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from

Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

79. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices, including assigning heavy workloads and productivity quotas, and discouraging employees from incurring overtime, prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Additionally, Defendants also failed to schedule rest periods, which further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

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

81. As a result of Defendants' practices and policies, Plaintiff and other non-party Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Plaintiff had to forego approximately half of his rest periods due to the heavy workload and productivity quotas. As a further example, some of Plaintiff's rest periods were interrupted by other employees asking him questions or requesting his assistance.

82. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying all rest period premiums owed when rest periods are not authorized and

1 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
2 Employees have not received premium pay for all missed rest periods. Alternatively, to the
3 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
4 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
5 Employees at the correct rate of pay for premiums because Defendants failed to include all
6 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
7 of remuneration, in the regular rate of pay.

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

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

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

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

28 86. Because Defendants did not record the time Plaintiff and other non-party

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

10 87. Additionally, because Defendants did not calculate other non-party Aggrieved
11 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
12 and rest period premiums, Defendants did not list the correct amount of gross wages in
13 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
14 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in
15 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
16 rest period premiums, in violation of section 226(a)(9).

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

25 89. California Labor Code section 1174(d) provides that "[e]very person employing
26 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
4 civil penalty if they fail to maintain accurate and complete records as required by section
5 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
7 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
8 as a result of failing to record the off-the-clock hours that they worked.

9 90. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
11 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
12 employment of any employees for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
14 Wage Order, employers are required to keep accurate time records showing when the
15 employee begins and ends each work period and meal period. During the relevant time
16 period, Defendants engaged in company-wide practices and/or policies of failing to record
17 actual hours worked (including falsifying time records by recording that compliant meal
18 periods were taken regardless of if or when meal periods were actually taken), and thereby
19 failed to keep accurate records of work period and meal period start and end times for Plaintiff
20 and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light
21 of Defendants’ failure to provide other non-party Aggrieved Employees with second 30-
22 minute meal periods to which they were entitled, Defendants kept no records of meal start and
23 end times for second meal periods.

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

27 //

28 //

1 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 204**

3 92. At all relevant times herein set forth, California Labor Code section 204
4 requires that all wages earned by any person in any employment between the 1st and the 15th
5 days, inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the 16th and the 26th day of the month during which
7 the labor was performed. Labor Code section 204 further provides that all wages earned by
8 any person in any employment between the 16th and the last day, inclusive, of any calendar
9 month, other than those wages due upon termination of an employee, are due and payable
10 between the 1st and the 10th day of the following month.

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

17 94. During the relevant time period, Defendants failed to pay Plaintiff and other
18 non-party Aggrieved Employees all wages due to them, including, but not limited to, overtime
19 wages, minimum wages, and/or meal and rest period premiums, within any time period
20 specified by California Labor Code section 204.

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

23 **FAILURE TO PAY WAGES UPON TERMINATION**

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

25 96. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 her employment, his or her wages shall become due and payable not later than seventy-two

(72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

98. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

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

100. First, during the relevant time period, Plaintiff and other non-party Aggrieved Employees were required to use their personal mobile devices, including, but not limited to,

cellular phones, and/or mobile data, to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related mobile device expenses. For example, Plaintiff had to regularly use his personal cellular phone to communicate with Defendants' management and coworkers regarding work related issues. Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile data and internet access to carry out their work-related responsibilities, Defendants failed to reimburse them for these costs.

101. Second, during the relevant time period, Defendants required Plaintiff and other non-party Aggrieved Employees to purchase supplies and equipment necessary for the performance of their duties. For example, Plaintiff spent about \$40 on two (2) pairs of headphones, which he needed to test alert units, because Defendants failed to provide employees with necessary equipment complete his daily tasks. Although Defendants required Plaintiff and other non-party Aggrieved Employees to purchase supplies and equipment to carry out their work-related responsibilities, Defendants failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

102. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with the actual equipment for use on the job, such as company mobile devices and necessary supplies and equipment; or it could have reimbursed employees for the costs of their mobile device usage and supplies and equipment expenses. Instead, Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

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

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

//

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

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

6 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
7 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
8 amount.

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

10 2. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
12 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
13 (by failing to include all forms of remuneration in the regular rate of pay for purposes of
14 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
15 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
16 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
17 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
18 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
19 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
20 termination); and 2802 (by failing to reimburse business expenses);

21 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
22 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
23 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

24 4. For attorneys' fees and costs pursuant to California Labor Code section
25 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
26 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
27 1197, 1198, and 2802;

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

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

3
4 Dated: August 11, 2023,

Respectfully submitted,

5 Capstone Law APC

6
7 By: _____

8 Orlando Villalba

Helga Hakimi

9 Joseph D. Parsons

10 Attorneys for Plaintiff Roberto Lizama
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “1”



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

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

June 6, 2023

VIA ONLINE SUBMISSION

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

Subject: *Roberto Lizama v. Life Alert Emergency Response, Inc.*

Dear PAGA Administrator:

This office represents Roberto Lizama in connection with his claims under the California Labor Code. Mr. Lizama was an employee of LIFE ALERT EMERGENCY RESPONSE, INC. ("LIFE ALERT").

The employer may be contacted directly at the address below:

LIFE ALERT EMERGENCY RESPONSE, INC.
16027 VENTURA BLVD., SUITE 400
ENCINO, CA 91436

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

LIFE ALERT employed Mr. Lizama as a non-exempt, hourly paid Unit Programmer from approximately December 2022 to March 2023. He typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time Mr. Lizama's employment with LIFE ALERT ended, he earned \$17.00 per hour. His primary job duties included, without limitation, inspecting, testing, updating, and programming Life Alert medical alert system units ("alert units").

LIFE ALERT has committed one or more of the following Labor Code violations against Mr. Lizama, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

LIFE ALERT’s Company-Wide and Uniform Payroll and HR Practices

LIFE ALERT EMERGENCY RESPONSE, INC. is a California corporation and operates a personal emergency response and home medical alert system. Upon information and belief, LIFE ALERT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Encino, California, for all non-exempt, hourly paid employees working for LIFE ALERT in California, including Mr. Lizama and other aggrieved employees. At all relevant times, LIFE ALERT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Lizama and other aggrieved employees, regardless of their location or position.

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

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

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

LIFE ALERT willfully failed to pay all overtime wages owed to Mr. Lizama and other aggrieved employees. During the relevant time period, Mr. Lizama and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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

First, LIFE ALERT had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Lizama and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with LIFE ALERT's assignment of heavy workloads and productivity quotas (*see infra*), led Mr. Lizama and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. Because LIFE ALERT discouraged overtime accrual by, among other things, requiring employees to obtain express permission from LIFE ALERT's supervisors for overtime hours, Mr. Lizama and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked.

For example, whenever Mr. Lizama reported early to work, he would begin his typical daily tasks of scanning alert units and preparing shipping boxes spending approximately 10-30 minutes completing these tasks. As a further example, approximately twice per week, Mr. Lizama worked after clocking out from his shifts completing closing duties such as sweeping the floors and taking out trash. Mr. Lizama and other aggrieved employees were not able to record this time spent working due to instruction from LIFE ALERT's management that any overtime was strictly prohibited and had to be approved. Thus, LIFE ALERT failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Lizama and other aggrieved employees received no compensation for this time.

Further, because LIFE ALERT provided employees with only one (1) access point to its timekeeping system, other aggrieved employees would often have to wait to clock in for the start of their shifts, because there would be a line of other employees clocking in. For example, other aggrieved employees would report to work at the start of their scheduled shifts, but would be required to wait in line for 3-5 minutes under LIFE ALERT's control until employees in front of them in line clocked in, time for which they were not paid.

Second, LIFE ALERT had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads and enforcing productivity quotas, which resulted in a failure to provide Mr. Lizama and other aggrieved employees with adequate meal period coverage. On information and belief, LIFE ALERT also failed to schedule and/or adhere to a schedule for meal periods, which further caused Mr. Lizama and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Lizama and other aggrieved employees were not afforded uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. For example, Mr. Lizama would be required to program 100 alert units every day, which caused him to work through his meal periods due to the heavy workload. Thus, Mr. Lizama and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. LIFE ALERT did not compensate Mr. Lizama and other aggrieved employees for the time they spent working off the clock during meal periods.

Further, on information and belief, because LIFE ALERT frowned upon employees accruing meal period penalties, LIFE ALERT expected Mr. Lizama and other aggrieved employees to clock out for meal periods to reflect compliant meal periods and/or recorded compliant meal periods on their behalf, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that LIFE ALERT would otherwise owe. Thus, Mr. Lizama and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As stated, during the relevant time period, due to LIFE ALERT's restrictions on overtime accrual, LIFE ALERT systematically failed to pay Mr. Lizama and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not appropriately recorded. As a result, Mr. Lizama and other aggrieved employees were required to complete various tasks off-the-clock, before and after their scheduled shifts, such as making scanning alert units, preparing shipping boxes, sweeping floors, taking out trash, and/or waiting in line to clock-in at an inadequate number of timekeeping machines.

Additionally, as set forth above, due to LIFE ALERT's uniform practices of assignment of heavy workloads and enforcement of productivity quotas, failure to schedule and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Mr. Lizama and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, to limit the meal penalties that LIFE ALERT would otherwise owe, LIFE ALERT expected Mr. Lizama and other aggrieved employees to clock out for meal periods to reflect compliant meal periods and/or recorded complaint meal periods on their

behalf, but required Mr. Lizama and other aggrieved employees to continue working, time for which they were not paid.

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

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, LIFE ALERT had, and continues to have, company-wide policies and/or practices of assigning heavy workloads and productivity quotas, discouraging employees from incurring overtime, and failing to schedule and/or adhere to a schedule for meal periods, which resulted in a lack of meal period coverage and prevented Mr. Lizama and other aggrieved employees from taking all timely meal periods to which they were entitled. As a result, Mr. Lizama and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, as stated, on regular basis, Mr. Lizama was required to work through all or part of his meal periods in order to meet LIFE ALERT's productivity expectation that he program 100 alert units per day. Further, Plaintiff took his meal periods late nearly every shift, after having worked in excess of five (5) hours into his shift, in order to complete his assigned duties.

Second, as stated above, on information and belief, because LIFE ALERT frowned upon employees accruing meal period penalties, LIFE ALERT's management expected Mr. Lizama and other aggrieved employees to clock out for meal periods and/or recorded compliant meal periods on their

behalf to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to limit meal penalties that would need to be paid by LIFE ALERT.

Third, LIFE ALERT did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During their employment, other aggrieved employees worked shifts in excess of ten (10) or more hours per day but were not provided a second 30-minute meal period. Mr. Lizama and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

LIFE ALERT knew or should have known that as a result of its policies, Mr. Lizama and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. LIFE ALERT further knew or should have known that it did not pay Mr. Lizama and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

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

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

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

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

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

As with meal periods, LIFE ALERT's company-wide practices, including assigning heavy workloads and productivity quotas, and discouraging employees from incurring overtime, prevented Mr. Lizama and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, LIFE ALERT also failed to schedule rest periods, which further led to Mr. Lizama and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of LIFE ALERT's practices and policies, Mr. Lizama and other aggrieved employees worked shifts in excess of 3.5 hours and in excess of 6 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Lizama had to forego approximately half of his rest periods due to the heavy workload and productivity quotas. As a further example, some of Mr. Lizama's rest periods were interrupted by other employees asking him questions or requesting his assistance.

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

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

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

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

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

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

Second, because LIFE ALERT did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, LIFE ALERT did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). LIFE ALERT also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is

unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, LIFE ALERT engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Lizama and other aggrieved employees in violation of section 1198. Furthermore, in light of LIFE ALERT’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, LIFE ALERT kept no records of meal start and end times for second meal periods.

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

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

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

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

During the relevant time period, LIFE ALERT failed to pay Mr. Lizama and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

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

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

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable

not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, Mr. Lizama and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data, to carry out their job duties, but LIFE ALERT failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Lizama had to regularly use his personal cellular phone to communicate with LIFE ALERT's management and coworkers regarding work related issues. Although LIFE ALERT required Mr. Lizama and other aggrieved employees to utilize their personal mobile devices and/or mobile data and internet access to carry out their work-related responsibilities, LIFE ALERT failed to reimburse them for these costs.

Second, during the relevant time period, LIFE ALERT required Mr. Lizama and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties. For example, Mr. Lizama spent about \$40 on two (2) pairs of headphones, which he needed to test alert units, because LIFE ALERT failed to provide employees with necessary equipment complete his daily tasks. Although LIFE ALERT required Mr. Lizama and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, LIFE ALERT failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

LIFE ALERT could have provided Mr. Lizama and other aggrieved employees with the actual tools for use on the job, such as company mobile devices and necessary supplies and equipment; or it could have reimbursed employees for the costs of their mobile device usage and supplies and equipment expenses. Instead, LIFE ALERT passed these operating costs off onto Mr. Lizama and other aggrieved employees. At all relevant times, Mr. Lizama did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, LIFE ALERT failed, on a company-wide basis, to provide written notice to Mr. Lizama and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). LIFE ALERT's failure to provide Mr. Lizama and other aggrieved employees with written notice of basic information regarding their employment with LIFE ALERT is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

Accordingly, Mr. Lizama seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Lizama, acting in the public interest as a private attorney general, seeks assessment and collection of

civil penalties for himself, all other aggrieved employees, and the State of California against LIFE ALERT for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Lizama's reasonable attempt to settle his dispute with LIFE ALERT prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform LIFE ALERT of Mr. Lizama's aforementioned grievances and the proposed remedies as detailed below, while affording LIFE ALERT a reasonable opportunity to satisfy Mr. Lizama's demands.

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

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

7. LIFE ALERT shall provide Mr. Lizama and all aggrieved employees employed by LIFE ALERT at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. LIFE ALERT shall properly calculate aggrieved employees' rates of pay for overtime and/or meal and rest period premiums based on all remuneration paid, pursuant to Labor Code sections 226.7 and 510.
9. LIFE ALERT shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
10. LIFE ALERT shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. LIFE ALERT shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 4-2001, section 20.

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

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

Best Regards,



Ninel Kocharyan

Copy: LIFE ALERT EMERGENCY RESPONSE, INC. (via U.S. Certified Mail)

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



7022 2410 0000 2405 8610

LIFE ALERT EMERGENCY
RESPONSE, INC.
16027 VENTURA BLVD.,
SUITE 400
ENCINO, CA 91436

SENDER: COMPLETE THIS SECTION

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

LIFE ALERT EMERGENCY
RESPONSE, INC.
16027 VENTURA BLVD.,
SUITE 400
ENCINO, CA 91436



2. A05500 0040 0717 006 0212 149 10 47
7022 2410 0000 2405 8610

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

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

- Service Type
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Restricted Delivery

7022 2410 0000 2405 8610

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery instructions, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee

U.S. POSTAGE

LI 000 000000

1. Signature of Addressee (Printed Name) _____
2. Signature of Addressee (Printed Name) _____
3. Signature of Addressee (Printed Name) _____
4. Signature of Addressee (Printed Name) _____
5. Signature of Addressee (Printed Name) _____
6. Signature of Addressee (Printed Name) _____
7. Signature of Addressee (Printed Name) _____
8. Signature of Addressee (Printed Name) _____
9. Signature of Addressee (Printed Name) _____
10. Signature of Addressee (Printed Name) _____

LIFE ALERT EMERGENCY
RESPONSE, INC.
16027 VENTURA BLVD.,
SUITE 400
ENCINO, CA 91436

SENDER: COMPLETE THIS SECTION

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

**LIFE ALERT EMERGENCY
RESPONSE, INC.**
16027 VENTURA BLVD.,
SUITE 400
ENCINO, CA 91436



2. Article Number (Printed or Stamped)

7022 2410 0000 2405 8610

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Mirna Alcala ☐ Agent ☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

MIRNA ALCALA

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

Service Type
Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

all

all Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery