

Filed **ORIGINAL**
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By _____, Deputy
23CV010856

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SACRAMENTO
11

12 JULIANNA VILLEGAS, as an aggrieved
employee pursuant to the Private Attorneys
13 General Act ("PAGA"), on behalf of the
State of California and other aggrieved
14 employees,

15 Plaintiff,

16 vs.

17 ADVANCED CALL CENTER
TECHNOLOGIES, LLC, a Georgia limited
18 liability company; and DOES 1 through 10,
inclusive,
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20 Defendants.
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Case No.: 23CV010856

**FIRST AMENDED COMPLAINT --PAGA
ENFORCEMENT ACTION**

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

Jury Trial Demanded

BY FAX

1 Plaintiff Julianna Villegas, as an aggrieved employee and on behalf of the State of
2 California and all other 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 November 6, 2023, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

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

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

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

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

9 **THE PARTIES**

10 6. Plaintiff Julianna Villegas is a resident of Chico, in Butte County, California.
11 Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately
12 August 2021 to July 2023. Plaintiff worked for Defendants as a Call Center Representative
13 out of their location in Carmichael, California. During her employment, Plaintiff typically
14 worked eight (8) hours or more per day and five (5) days or more per week. Plaintiff’s
15 primary job duties included, without limitation, making and responding to customer calls and
16 assisting customers.

17 7. ADVANCED CALL CENTER TECHNOLOGIES, LLC was and is, upon
18 information and belief, a Georgia limited liability company, and at all times hereinafter
19 mentioned, an employer whose employees are engaged throughout this county and the State of
20 California.

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

25 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
26 were the partners, agents, owners, or managers of ADVANCED CALL CENTER
27 TECHNOLOGIES, LLC, at all relevant times.

28 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, ADVANCED CALL
2 CENTER TECHNOLOGIES, LLC and/or DOES 1 through 10 (collectively, “Defendants” or
3 “ADVANCED CALL CENTER”), each acting as the agent, employee, alter ego, and/or joint
4 venturer of, or working in concert with, each of the other co-Defendants and was acting within
5 the course and scope of such agency, employment, joint venture, or concerted activity with
6 legal authority to act on the others’ behalf. The acts of any and all Defendants were in
7 accordance with, and represent, the official policy of Defendants.

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

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

15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 13. Defendants are providers of outsourced call center services to the financial
17 services, mortgage, telecommunications, healthcare, cable, and retail industries. Upon
18 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
19 department at their corporate headquarters in Berwyn, Pennsylvania, which is responsible for
20 recruiting and hiring of new employees, and communicating and implementing Defendants’
21 company-wide policies, including timekeeping policies and meal and rest period policies, to
22 employees throughout California.

23 14. In particular, Plaintiff and other non-party Aggrieved Employees, on
24 information and belief, received the same standardized documents and/or written policies.
25 Upon information and belief, the usage of standardized documents and/or written policies,
26 including new-hire documents, indicate that Defendants dictated policies at the corporate level
27 and implemented them company-wide, regardless of their employees’ assigned locations or
28 positions. Upon information and belief, Defendants set forth uniform policies and procedures

1 in several documents provided at an employee's time of hire.

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

11 16. Defendants continue to employ non-exempt or hourly paid employees in
12 California.

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

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

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

24 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
27 meal and rest period premiums, that included as eligible income all remuneration required by
28 law, including but not limited to, all income derived from shift differential pay, incentive pay,

1 nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms
2 of remuneration in calculating the regular rate of pay for Plaintiff and other non-party
3 Aggrieved Employees.

4 21. 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 receive at least minimum wages for compensation and that they were not receiving at least
7 minimum wages for work that was required to be done off-the-clock. In violation of the
8 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
9 least minimum wages for work done off-the-clock.

10 22. 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 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
13 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
14 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
15 other non-party Aggrieved Employees were not provided with all meal periods or payment of
16 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
17 uninterrupted, thirty (30) minute meal period.

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

26 24. 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 receive complete and accurate wage statements in accordance with California law. In

1 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
2 were not provided complete and accurate wage statements.

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

7 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 timely payment of wages during their employment. In violation of the California Labor Code,
10 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
11 including, but not limited to, overtime wages, minimum wages, meal and rest period
12 premiums, and/or sick leave pay, within permissible time periods.

13 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 timely payment of all wages earned upon termination of employment. In violation of the
16 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
17 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
18 meal and rest period premiums, and/or sick leave pay, within permissible time periods.

19 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that they were prohibited from issuing instruments for the payment of
21 wages that were not payable in cash, on demand, without discount, and with authorization, but
22 did so, in violation of the California Labor Code.

23 29. 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 the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

26 30. 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 payment of wages as designated by statute. In violation of the California Labor Code,

Defendants secretly paid Plaintiff and other non-party Aggrieved Employees lower wages than required by statute while purporting to pay them proper wages.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible income, all income derived from shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of compensation, and to receive itemized wage statements or separate written statements showing the amount of paid sick leave. In violation of the California Labor Code, Defendants failed to include all forms of remuneration in calculating the regular rate of pay for sick leave pay and failed to provide Plaintiff and other non-party Aggrieved Employees with written itemized wage statements showing this information.

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

33. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that Defendants had a duty to provide Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of their employment with Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

35. At all times herein set forth, PAGA provides that any provision of law under

1 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
2 assessed and collected by the LWDA for violations of the California Labor Code and
3 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
4 civil action brought on behalf of themselves and other current or former employees pursuant
5 to procedures outlined in California Labor Code section 2699.3.

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

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

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

- 15 (a) The aggrieved employee shall give written notice by online filing
16 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
17 to the employer of the specific provisions of the California Labor Code
18 alleged to have been violated, including the facts and theories to support
19 the alleged violations.
- 20 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
21 2699.3(a) and any employer response to that notice shall be
22 accompanied by a filing fee of seventy-five dollars (\$75).
- 23 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
24 employer and the aggrieved employee by certified mail that it does not
25 intend to investigate the alleged violation within sixty (60) calendar
26 days of the postmark date of the Employee’s Notice. Upon receipt of
27 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
28 five (65) calendar days of the postmark date of the Employee’s Notice,

1 the aggrieved employee may commence a civil action pursuant to
2 California Labor Code section 2699 to recover civil penalties in addition
3 to any other penalties to which the employee may be entitled.

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

8 (a) The aggrieved employee or representative shall give written notice by
9 online filing to the LWDA and by certified mail to the employer of the
10 specific provisions of the California Labor Code alleged to have been
11 violated (other than those listed in Section 2699.5), including the facts
12 and theories to support the alleged violation.

13 (b) An aggrieved employee's notice filed with the LWDA pursuant to
14 2699.3(c) and any employer response to that notice shall be
15 accompanied by a filing fee of seventy-five dollars (\$75).

16 (c) The employer may cure the alleged violation within thirty-three (33)
17 calendar days of the postmark date of the notice. The employer shall
18 give written notice by certified mail within that period of time to the
19 aggrieved employee or representative and the agency if the alleged
20 violation is cured, including a description of actions taken, and no civil
21 action pursuant to Section 2699 may commence. If the alleged violation
22 is not cured within the 33-day period, the employee may commence a
23 civil action pursuant to Section 2699.

24 40. On November 6, 2023, Plaintiff provided written notice by online filing to the
25 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
26 Code alleged to have been violated, including facts and theories to support the alleged
27 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
28 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The

1 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
2 Plaintiff PAGA Case Number LWDA-CM-992500-23. A true and correct copy of Plaintiff's
3 written notice to the LWDA and Defendants dated November 6, 2023, is attached hereto as
4 "Exhibit 1."

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

8 42. Thus, Plaintiff has satisfied the administrative prerequisites under California
9 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
10 violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a),
11 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

12 43. Labor Code section 558(a) provides "[a]ny employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare
15 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
16 dollars (\$50) for each underpaid employee for each pay period for which the employee was
17 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was underpaid" Labor
19 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
20 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
21 as a private attorney general, seeks assessment and collection of civil penalties under Labor
22 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
23 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
24 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as private
25 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
26 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
27 applicable IWC Wage Order.

28 44. Defendants, at all times relevant to this complaint, were employers or persons

1 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
2 Employees' rights by violating various sections of the California Labor Code as set forth
3 above.

4 45. As set forth below, Defendants have violated numerous provisions of both the
5 California Labor Code sections regulating hours and days of work as well as the applicable
6 IWC Wage Order.

7 46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
8 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
9 private attorney general, seeks assessment and collection of civil penalties for herself, all other
10 non-party Aggrieved Employees, and the State of California against Defendants for violations
11 of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246,
12 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

13 **FIRST CAUSE OF ACTION**

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

15 **(Against all Defendants)**

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

18 48. California Labor Code §§ 2698, *et seq.* ("PAGA") permit Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
20 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221,
21 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor
22 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
23 penalties for violations of those Labor Code sections not found in section 2699.5, including
24 sections 246, 248.6, 516, 1182.12, and 2810.5.

25 49. Defendants' conduct, as alleged herein, violates numerous sections of the
26 California Labor Code, including, but not limited to, the following:

- 27 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
28 Wage Order for Defendants' failure to compensate Plaintiff and other

1 non-party Aggrieved Employees with all required overtime, as set forth
2 below;

3 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
4 applicable IWC Wage Order for Defendants' failure to include all forms
5 of remuneration in the regular rate of pay as required by law for
6 purposes of paying overtime wages and/or meal and rest period
7 premiums, to Plaintiff and other non-party Aggrieved Employees, as set
8 forth below;

9 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
10 the applicable IWC Wage Order for Defendants' failure to compensate
11 Plaintiff and other non-party Aggrieved Employees with at least
12 minimum wages for all hours worked, as set forth below;

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

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

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

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

28 (h) Violation of Labor Code section 204 for failure to pay all earned wages

during employment, as set forth below;

- (i) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (j) Violation of Labor Code sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand, without discount, and with prior authorization, as set forth below;
- (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (l) Violation of Labor Code section 223 for secretly paying Plaintiff and other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (m) Violation of Labor Code sections 246 and 248.6 for failure to properly calculate the sick leave paid to Plaintiff and other non-party Aggrieved Employees and for failure to provide written notice of paid sick leave benefits, as set forth below;
- (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (o) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

50. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission

1 shall be the . . . standard conditions of labor for employees. The employment of any employee
2 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

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

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

23 55. During the relevant time period, Defendants willfully failed to pay all overtime
24 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
25 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
26 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
27 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
28 not recorded.

1 56. During the relevant time period, Defendants had, and continue to have, a
2 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
3 party Aggrieved Employees from recording hours worked that were outside of their scheduled
4 shifts in order to limit the amount of overtime employees could accrue. Because Defendants
5 discouraged overtime accrual by, among other things, altering and/or falsifying timesheets,
6 along with Defendants' practice of assigning of heavy workloads and productivity
7 expectations (*see infra*), Plaintiff and other non-party Aggrieved Employees were required to
8 complete assigned tasks outside of their scheduled shifts without being compensated for the
9 time they worked. Indeed, Defendants implemented a timekeeping system that prevented
10 employees from clocking in until at most five (5) minutes before their scheduled shifts so that
11 they were prohibited from recording the entire time worked prior to the start of their
12 scheduled shifts. Consequently, Plaintiff and other non-party Aggrieved Employees
13 performed work prior to the start of their shifts, but were unable to record this time. For
14 example, Plaintiff spent approximately 10 minutes booting up her computer, logging in, and
15 clocking in for her shift, but had no way of recording this time worked. Upon information and
16 belief, when Plaintiff attempted to clock in prior to the start of her shift, the timekeeping
17 system would not let her do so without Defendants' management's approval, which was rarely
18 granted. As a further example, after nearly every shift, Plaintiff was required to remain on an
19 ongoing call for up to 15 minutes after her scheduled shift end time, but, on information and
20 belief, Defendants' management would alter and/or falsify time records to shave off this time
21 Plaintiff spent working in order to further limit overtime accrual. Thus, Defendants failed to
22 track the time employees spent completing their duties, and Plaintiff and other non-party
23 Aggrieved Employees received no compensation for this time.

24 57. Further, Defendants required that Plaintiff and other non-party Aggrieved
25 Employees spend time performing work-related tasks while off the clock. For example,
26 Plaintiff spent approximately three (3) hours off-the-clock setting up her workstation,
27 including her company-issued computer, audio, and necessary software, to complete her
28 assigned duties from home. Additionally, during the relevant time period, Plaintiff and other

1 non-party Aggrieved Employees were required to complete compliance modules which
2 involved watching videos and answering questions. Due to the heavy workload, Plaintiff was
3 unable to complete these modules during her scheduled shifts and, as a result, spent about 50
4 hours per month completing them off the clock. As a further example, during the relevant
5 time period, Defendants implemented, on a company-wide basis, an employer-imposed
6 requirement that Plaintiff and other non-party Aggrieved Employees undergo mandatory
7 COVID-19 temperature checks and/or health screenings before clocking in for their scheduled
8 shifts. Even though Defendants required these health screenings, Defendants did not
9 compensate Plaintiff and other non-party Aggrieved Employees for the time spent undergoing
10 mandatory temperature checks and/or health screenings. Thus, Defendants failed to track the
11 time Plaintiff and other non-party Aggrieved Employees spent working outside of their
12 scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no
13 compensation for this time.

14 58. Second, during the relevant time period, Defendants had, and continue to have,
15 a company-wide policy and/or practice of assigning heavy workloads, including pressuring
16 employees to meet productivity expectations and stringent customer service metrics, such as
17 completing at least five (5) 100% customer satisfaction calls per month and not “failing” more
18 than two (2) calls per week. Defendants’ policies and/or practices resulted in a failure to
19 provide Plaintiff and other non-party Aggrieved Employees with adequate meal period
20 coverage. Moreover, Defendants also failed to adhere to a schedule for meal periods, which
21 further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their
22 duties for compliant meal periods. As a result, Plaintiff and other non-party Aggrieved
23 Employees were not afforded uninterrupted thirty (30) minute meal periods during shifts in
24 which they were entitled to receive meal periods. For example, Defendants’ management
25 interrupted Plaintiff’s meal periods by calling her to discuss work-related matters. As a
26 further example, on a daily basis, Plaintiff and other non-party Aggrieved Employees cut short
27 their meal periods due to Defendants’ requirement that employees return from their meal
28 periods five (5) to seven (7) minutes early and prepare to clock in and resume work at a

1 specified time. Thus, Plaintiff and other non-party Aggrieved Employees worked through
2 meal periods and/or had meal periods cut short or interrupted in order to handle their
3 workloads and adhere to Defendants' practices and/or policies. Defendants did not
4 compensate Plaintiff and other non-party Aggrieved Employees for the time they spent
5 working off the clock during meal periods.

6 59. Defendants knew or should have known that as a result of these company-wide
7 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
8 assigned duties off-the-clock and during meal periods, and were suffered or permitted to
9 perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved
10 Employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more,
11 some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and
12 other non-party Aggrieved Employees were not paid overtime wages for all of the overtime
13 hours they actually worked.

14 60. Moreover, Defendants did not pay Plaintiff and other non-party Aggrieved
15 Employees the correct overtime rate for the recorded overtime hours that they generated. In
16 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
17 Employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms
18 of remuneration. However, in violation of the California Labor Code, on information and
19 belief, Defendants failed to incorporate all compensation, including shift differential pay,
20 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the
21 calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
22 Therefore, during times when Plaintiff and other non-party Aggrieved Employees worked
23 overtime and received these other forms of pay, Defendants failed to pay all overtime wages
24 by paying a lower overtime rate than required.

25 61. For example, Defendants paid Plaintiff and other non-party Aggrieved
26 Employees shift differential pay for hours worked after midnight, which were listed on
27 Plaintiff's and other non-party Aggrieved Employees' wage statements as "Differential."
28 During the pay periods that Plaintiff and other non-party Aggrieved Employees were paid

overtime wages, Defendants did not incorporate these payments into Plaintiff's and other non-party Aggrieved Employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and other non-party Aggrieved Employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and other non-party Aggrieved Employees on a company-wide basis.

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

FAILURE TO PAY MINIMUM WAGES

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

63. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 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").

64. As set forth above, as a result of Defendants' policy of limiting the amount of overtime employees could accrue, Defendants required Plaintiff and other non-party Aggrieved Employees to perform work off-the-clock. As also stated, due to Defendants' implementation of a timekeeping system that prevented employees from clocking in until at most five (5) minutes before their scheduled shifts and Defendants' practices of management altering and/or falsifying time records, Plaintiff and other non-party Aggrieved Employees were prevented from recording the entire time worked outside of their scheduled shifts, and

1 thus were not paid for this time. Furthermore, Defendants required Plaintiff and other non-
2 party Aggrieved Employees to work off the clock before and after their scheduled shifts to
3 complete tasks, such as booting up their computers and logging in, completing phone calls,
4 setting up workstations, completing compliance modules, and undergoing COVID-19 health
5 screenings. However, Defendants failed to track all of this time Plaintiff and other non-party
6 Aggrieved Employees spent working off-the-clock, and thus, Plaintiff and other non-party
7 Aggrieved Employees received no compensation for this time.

8 65. Additionally, as set forth above, due to Defendants' policy and/or practice of
9 assigning heavy workloads, failure to adhere to a schedule for meal periods, and subsequent
10 lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were
11 impeded from taking all uninterrupted meal periods to which they were entitled and were
12 required to work off-the-clock during meal periods, time for which they were not paid.

13 66. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
14 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
15 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
16 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
17 1194, 1197, and 1198.

18 67. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
20 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

27 69. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is
3 not more than six (6) hours, the meal period may be waived by mutual consent of both the
4 employer and the employee. Under California law, first meal periods must start after no more
5 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 70. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

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

16 72. During the relevant period, as stated, Defendants had, and continue to have, a
17 company-wide policy and/or practice of assigning heavy workloads, including pressuring
18 employees to meet productivity expectations and strict customer service metrics, discouraging
19 employees from incurring overtime, and failing to adhere to a schedule for meal periods,
20 resulted in a lack of meal period coverage and prevented Plaintiff and other non-party
21 Aggrieved Employees from taking all timely meal periods to which they were entitled.

22 73. As a result, Plaintiff and other non-party Aggrieved Employees had to work
23 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
24 extended periods of time before taking meal periods. For example, as stated, Plaintiff had her
25 meal periods interrupted in order to respond to calls from Defendants' management regarding
26 work-related matters. As a further example, Plaintiff sometimes could not take her meal
27 periods until more than five (5) hours into her shifts, when customer phone calls took longer
28 than anticipated, but needed to be completed before she could take her meal period.

1 74. Moreover, Defendants did not provide other non-party Aggrieved Employees
2 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in
3 one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period
4 waivers on days that they were entitled to meal periods and were not relieved of all duties.

5 75. Defendants knew or should have known that as a result of their policies and
6 practices, Plaintiff and other non-party Aggrieved Employees were not actually relieved of all
7 duties to take timely, uninterrupted meal periods. Defendants further knew or should have
8 known that they did not pay Plaintiff and other non-party Aggrieved Employees meal period
9 premiums when meal periods were missed, late, short, and/or interrupted.

10 76. Furthermore, Defendants engaged in a company-wide practice and/or policy of
11 not paying all meal period premiums owed when compliant meal periods are not provided.
12 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
13 have not received premium pay for all missed, late, and interrupted meal periods.
14 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved
15 Employees premium pay for missed, late, and interrupted meal periods, Defendants did not
16 pay Plaintiff and other non-party Aggrieved Employees at the correct rate of pay for
17 premiums because Defendants systematically failed to include all forms of compensation,
18 such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of
19 remuneration, in the regular rate of pay.

20 77. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
21 Employees compliant meal periods and failed to pay the full meal period premiums due.
22 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
23 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
24 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
25 2699(a), (f), and (g).

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

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

28 78. At all relevant times herein set forth, the applicable IWC Wage Order and

1 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
2 non-party Aggrieved Employees' employment by Defendants.

3 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
4 employer shall authorize and permit all employees to take rest periods, which insofar as
5 practicable shall be in the middle of each work period" and that the "rest period time shall be
6 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
7 hours or major fraction thereof" unless the total daily work time is less than three and one-half
8 (3 ½) hours.

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

17 81. Pursuant to the applicable IWC Wage Order and California Labor Code section
18 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
19 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
20 required rest period was not authorized and permitted.

21 82. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
23 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
24 Defendants' policies and/or practices of assigning heavy workloads, including adhering to
25 productivity expectations and meeting customer metrics, prevented Plaintiff and other non-
26 party Aggrieved Employees from being relieved of all duty in order to take their rest periods.
27 Defendants also failed to adhere to a schedule for rest periods, which, coupled with
28 Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other

1 non-party Aggrieved Employees not being authorized and permitted to take compliant rest
2 periods.

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

11 84. As a result, Plaintiff and other non-party Aggrieved Employees would work
12 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being
13 permitted and authorized to take all ten (10) minute rest periods to which they were entitled.
14 For example, Plaintiff had to forego some of her rest periods in order to handle the heavy
15 workload and due to the lack of coverage. When Plaintiff was able to take her rest periods,
16 they were interrupted by Defendants' management calling Plaintiff to discuss work-related
17 matters.

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

28 86. Defendants' conduct violates the applicable IWC Wage Order and California

1 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
2 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
3 558 and/or 2699(a), (f), and (g).

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

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

11 88. During the relevant time period, Defendants have knowingly and intentionally
12 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
13 inaccurate wage statements. For example, Defendants issued uniform wage statements to
14 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
15 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
16 the pay period, including rates of pay for overtime wages, meal and rest period premiums,
17 and/or paid sick leave, and the corresponding number of hours worked at each hourly rate.
18 Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

19 89. Because Defendants did not record the time Plaintiff and other non-party
20 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
21 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
22 compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
23 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
24 Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of
25 pay in effect during the pay period and corresponding accurate number of work hours worked
26 at each hourly rate in violation of section 226(a)(9).

27 90. In addition, because Defendants did not calculate Plaintiff's and other non-
28 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime

1 wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the
2 correct amount of gross wages in compliance with section 226(a)(1). For the same reason,
3 Defendants failed to list the correct amount of net wages in violation of section 226(a)(5).
4 Defendants also failed to correctly list all applicable hourly rates in effect during the pay
5 period, namely, correct rates of pay for overtime wages, meal and rest period premiums,
6 and/or paid sick leave, in violation of section 226(a)(9).

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

15 92. California Labor Code section 1174(d) provides that “[e]very person employing
16 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
17 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
18 plants or establishments at which employees are employed, payroll records showing the hours
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
20 applicable piece rate paid to, employees employed at the respective plants or
21 establishments” During the relevant time period, and in violation of Labor Code section
22 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and
23 other non-party Aggrieved Employees showing the daily hours they worked and the wages
24 paid thereto as a result of failing to record the off-the-clock hours that they worked.

25 93. California Labor Code section 1198 provides that the maximum hours of work
26 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
27 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
28 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, Defendants failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of work period and/or meal period start and end times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

95. At all relevant times herein set forth, 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. Labor Code section 204 further provides 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.

96. At all relevant times herein, 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, at all relevant times herein, 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.

1 97. During the relevant time period, Defendants willfully failed to pay Plaintiff and
2 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
3 wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the
4 time periods specified by California Labor Code section 204.

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

7 **FAILURE TO PAY WAGES UPON TERMINATION**

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

9 99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
10 that if an employer discharges an employee, the wages earned and unpaid at the time of
11 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
12 her employment, his or her wages shall become due and payable not later than seventy-two
13 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
14 his or her intention to quit, in which case the employee is entitled to his or her wages at the
15 time of quitting.

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

21 101. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
22 who are no longer employed by Defendants their wages earned and unpaid at the time of
23 discharge, or within seventy-two (72) hours of their leaving Defendant's employ, violates
24 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
25 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
26 2699(a), (f), and (g).

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1 **UNLAWFUL DIRECT DEPOSIT AND DISCOUNT OF WAGES**

2 **VIOLATION OF LABOR CODE SECTIONS 212 AND 213**

3 102. California Labor Code section 212 prohibits employers from issuing any
4 instruments for the payment of wages unless such instruments are negotiable and payable in
5 cash, on demand, without discount, at some established place of business in the state, and the
6 name and address of which must appear on the instrument. California Labor Code section 212
7 further prohibits employers from issuing payment of wages due in the form of any scrip,
8 coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or
9 redeemable otherwise than in money.

10 103. California Labor Code section 213 permits employers to pay employees via
11 direct deposit so long as the employee authorizes payment via direct deposit.

12 104. Under California law, employers are permitted to fulfill their wage payment
13 obligations to employees by using payroll debit cards, but only so long as the employee is
14 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson*
15 *v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL
16 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor
17 Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible
18 relied heavily on:

19 ... [T]he fact that the pay programs were optional, thereby
20 allowing an employee to either participate in the program or
21 receive his or her pay in some other way, such as direct deposit.
22 Specifically, the DLSE opined that “[t]he success of the described
23 procedure, in practice, will of course require that ... it is
24 presented as an *alternative* method for wage payment for which
25 [the employees’] participation is optional.” The DLSE also stated,
26 “[i]t is significant that the program does not mandate employee
27 participation in the Money Network Service and that it is designed
28 to provide an alternative for employees receiving their wage
payment. Employees are also given the option of having their pay
direct deposited into an account of their choosing. . . .” (internal
citations omitted).

105. In addition, California law only permits employers to utilize payroll debit card
programs if they provide employees with effective access to their wages without discount.
The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of

1 payroll debit cards where the following requirements are satisfied:

2 . . . (1) [T]he “wages [are] payable at some established place of
3 business in the state and there be at least 30 days of sufficient
4 funds for payment,”; (2) the employees are “fully informed of the
5 service and procedures and that it is represented as an alternative
6 method for wage payment for which their participation is
7 optional,”; (3) the employees receive “an itemized wage
8 statement,”; and (4) “at least one transaction per pay period [is]
9 without fee.”

10 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

11 106. Further, the DLSE notes that the Labor Code manifests:

12 . . . [A] strong public policy that prohibits an employer (or its
13 agent) from imposing conditions or obstacles which interfere with
14 or prevent an employee’s (*sic*) from promptly receiving their due
15 wages *in full*. The imposition of a fee in order to readily *access*
16 one’s earned and paid wage under a payroll card program which
17 is designed to discharge the employer’s wage payment obligations
18 could impermissibly interfere with an employee’s receipt of page
19 wages by creating a financial condition which would have the
20 *effect* of reducing or discounting wages because such fee would
21 be charged against the same account in which wages are
22 deposited.” (Emphases in original)

23 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
24 providers “effectively act as agents of the client employers in discharging the employer’s
25 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the
26 Labor Code does not purport to regulate the specific arrangements between employers and
27 payroll service providers, both an employer and, under the express language in Labor Code
28 § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

107. During the relevant time period, Defendants had an agreement with a payroll
service provider, Dayforce, for the issuance of payroll debit cards to employees, including
Plaintiff and other non-party Aggrieved Employees, to discharge their wage payment
obligations to their employees. Under Defendants’ payroll debit card program, Plaintiff and
other non-party Aggrieved Employees did not have easy access to the entirety of their wages
without incurring a fee. Plaintiff and other non-party Aggrieved Employees were unable to
withdraw their entire wages in at least one transaction without incurring a fee, which resulted
in a discount in their pay. For example, Plaintiff was subjected to a fee of \$2.50 per

1 transaction when withdrawing her wages from an out-of-network ATM, and was restricted to
2 a \$500 daily withdrawal limit. Thus, Defendants' payroll debit card program was and
3 continues to be unlawful as it did not give Plaintiff and other non-party Aggrieved Employees
4 access to their entire wages without discount and without delay.

5 108. On information and belief, Defendants had a practice and/or policy of
6 automatically issuing payroll debit cards to departing employees without giving them the
7 option to elect their form of payment for their final wages. For example, on information and
8 belief, Plaintiff received her final wages on a payroll debit card without a choice of an
9 alternative method, such as a written check. Instead, Defendants automatically enrolled
10 Plaintiff and other non-party Aggrieved Employees in their payroll debit card program for the
11 purpose of issuing their final wages to them without prior, voluntary approval. Thus,
12 Defendants' payroll debit card program was and continues to be unlawful as it does not give
13 employees the choice as to whether they would like to receive their final wages on a payroll
14 debit card or via some other payment method.

15 109. California courts recognize a policy favoring the full and prompt payment of
16 wages to employees. Defendants' payroll card program is inconsistent with this policy.
17 Because Defendants' company-wide payroll debit card program is involuntary and denies
18 Plaintiff and other non-party Aggrieved Employees of easy access to the entirety of their
19 wages, the program violates California Labor Code sections 212 and 213. Plaintiff and other
20 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
21 Labor Code sections 225.5 and/or 2699(a), (f), and (g).

22 **COLLECTING OR RECEIVING WAGES ALREADY PAID**

23 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

24 110. At all times relevant herein, California Labor Code section 221 provides that it
25 shall be unlawful for any employer to collect or receive from an employee any part of wages
26 theretofore paid by said employer to said employee. California Labor Code section 224 also
27 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
28 deduction is expressly authorized in writing by the employee."

111. During the relevant time period, upon information and belief, Defendants unlawfully deducted a portion of wages previously paid to Plaintiff and other non-party Aggrieved Employees in violation of California Labor Code section 221. On information and belief, Defendants systematically, and on a company-wide basis, provided Plaintiff and other non-party Aggrieved Employees with payroll debit cards as payment of their wages. Under Defendants' payroll debit card program, Plaintiff and other non-party Aggrieved Employees were assessed various fees in connection with their use of the payroll debit cards. For example, as described above, Plaintiff and other non-party Aggrieved Employees were required to pay out-of-network ATM withdrawal fees, in-network ATM fees from third parties, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Plaintiff and other non-party Aggrieved Employees resulted in a discount of their wages.

112. Defendants' conduct as alleged herein violates California Labor Code sections 221 and 224. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

SECRET PAYMENT OF A LOWER WAGE

VIOLATION OF LABOR CODE SECTION 223

113. At all times, California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

114. During the relevant time period, Defendants willfully and systematically issued payroll debit cards to Plaintiff and other non-party Aggrieved Employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. Defendants' payroll debit card program resulted in the payment of less than statutorily required wages to Plaintiff and other non-party Aggrieved Employees. In doing so, Defendants acted with the intent to deprive Plaintiff and other non-party Aggrieved Employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, Defendants paid Plaintiff and other non-party Aggrieved Employees lower wages than those they were entitled to while

1 purporting that Plaintiff and other non-party Aggrieved Employees were properly paid.

2 115. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
3 the correct designated wage, while purporting to pay legal wages, is a violation of California
4 Labor Code section 223. Plaintiff and other non-party Aggrieved Employees are therefore
5 entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f),
6 and (g).

7 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY AND**
8 **FAILURE TO PROVIDE WRITTEN NOTICE OF PAID SICK LEAVE**
9 **VIOLATION OF LABOR CODE SECTION 246 AND 248.6**

10 116. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
11 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
12 days from the commencement of employment with paid sick days, to be accrued at least one
13 hour for every 30 hours worked. California Labor Code section 246(i) provides that an
14 employer must provide an employee with written notice that sets forth the amount of paid sick
15 leave available, or paid time off that an employer provides in lieu of sick leave, for use on
16 either the employee's itemized wage statement or in a separate written statement provided on
17 the designated pay date with the employee's wages. Further, Labor Code section 246(l)
18 provides that an employer shall calculate paid sick leave by using one of two calculations: 1)
19 "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the
20 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
21 not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for
22 nonexempt employees shall be calculated by dividing the employee's total wages, not
23 including overtime premium pay, by the employee's total hours worked in the full pay periods
24 of the prior 90 days of employment."

25 117. At all relevant times herein, California Labor Code section 248.6 provides
26 covered employees with COVID-19 supplemental paid sick leave. Effective through
27 December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid
28 sick leave shall be set forth separately from paid sick days and that an "employer shall provide

1 an employee with written notice that sets forth the amount of COVID-19 supplemental paid
2 sick leave that the employee has used through the pay period in which it was due to be paid on
3 either the employee's itemized wage statement . . . or in a separate written statement provided
4 on the designated pay date with the employee's payment of wages. The employer shall list
5 zero hours used if a worker has not used any COVID-19 supplemental paid sick leave."
6 Further, Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19
7 supplemental paid sick leave shall be compensated at a rate equal to the following: 1)
8 "[c]alculated in the same manner as the regular rate of pay for the workweek in which the
9 employee uses paid sick time, whether or not the employee actually works overtime in that
10 workweek[;]" or 2) "[c]alculated by dividing the employee's total wages, not including
11 overtime premium pay, by the employee's total nonovertime hours worked in the full pay
12 periods occurring within the prior 90 days of employment; provided that, for nonexempt
13 employees paid by piece rate, commission or other method that uses all hours to determine the
14 regular rate of pay, total wages, not including overtime premium pay, shall be divided by all
15 hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this
16 subdivision."

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

119. Moreover, during the relevant time period, Defendants failed, on a company-wide basis, to provide Plaintiff and other non-party Aggrieved Employees with written notice of paid sick leave or COVID-19 supplemental paid sick leave benefits used by them.

120. Defendants' failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other non-party Aggrieved Employees on a company-wide basis in violation of California Labor Code sections 246(l) and 248.6(b)(3)(A). Moreover, Defendants' systematic failure to provide written notice of sick leave benefits (including COVID-19 supplemental paid sick leave benefits) to Plaintiff and other non-party Aggrieved Employees is in violation of Labor Code sections 248.6(d).

121. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

122. 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."

123. First, during the relevant time period, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or

1 mobile data expenses. For example, Plaintiff was required to download an authenticator
2 mobile application on her personal mobile device, and to use her mobile data to for a two-step
3 verification process in order to log into her work computer. Plaintiff and other non-party
4 Aggrieved Employees were not compensated for the cost of the mobile data used to download
5 and access the application to complete the two-step verification process. As a further
6 example, Defendants' management contacted Plaintiff on her personal cellular phone
7 regarding work-related matters. Furthermore, Plaintiff and other non-party Aggrieved
8 Employees were required to use their personal internet access plans in order to perform their
9 job duties. Although Defendants required Plaintiff and other non-party Aggrieved Employees
10 to use their personal mobile devices, mobile data, and/or internet access to carry out their
11 work-related duties, Defendants failed to reimburse them for their costs incurred.

12 124. Second, during the relevant time period, Defendants required Plaintiff and other
13 non-party Aggrieved Employees to purchase equipment necessary for the performance of their
14 duties, but failed to reimburse them for their out-of-pocket costs. For example, Plaintiff was
15 required to purchase for \$30 two (2) laptop chargers throughout her employment because the
16 charger provided by Defendants did not work. As a further example, on information and
17 belief, other non-party Aggrieved Employees were required to purchase office equipment,
18 HDMI converters, desks, chairs, and office supplies but were not reimbursed for their
19 expenses. Although Defendants required Plaintiff and other non-party Aggrieved Employees
20 to purchase equipment to carry out their work-related responsibilities, Defendants failed to
21 reimburse them for their out-of-pocket costs.

22 125. Defendants could have provided Plaintiff and other non-party Aggrieved
23 Employees with the actual equipment for use on the job, such as company mobile devices,
24 computer-related equipment, and office supplies and equipment. Or, Defendants could have
25 reimbursed employees for the costs of their mobile device usage, internet access, and
26 equipment and supply expenses. Instead, Defendants passed these operating costs off onto
27 Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did not
28 earn at least two (2) times the minimum wage.

126. 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.

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

FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)

128. 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 containing basic and material payroll information, including, among other things, 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. Labor Code § 2810.5(a)(1)(A)-(C).

129. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and other non-party Aggrieved Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

130. Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor

Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 212 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 246 and 248.6 (by failing to properly calculate sick leave pay and provide written notice of paid sick leave); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment);

3. For civil penalties, pursuant to California Labor Code sections 210, 225.5, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 248.6, 510, 512(a), 516,

1 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

2 4. For attorneys' fees and costs pursuant to California Labor Code section
3 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
4 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 248.6, 510,
5 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

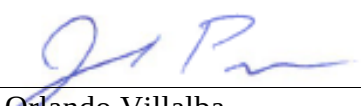
6 5. For pre-judgment and post-judgment interest as provided by law; and

7 6. For such other and further relief as the Court may deem equitable and
8 appropriate.

9
10 Dated: January 12, 2024

Respectfully submitted,

11 Capstone Law APC

12
13 By: 

14 Orlando Villalba

Helga Hakimi

15 Joseph D. Parsons

16 Attorneys for Plaintiff Julianna Villegas
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EXHIBIT “A”

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

November 6, 2023

VIA ONLINE SUBMISSION

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

Subject: *Julianna Villegas v. Advanced Call Center Technologies, LLC*

Dear PAGA Administrator:

This office represents Julianna Villegas in connection with her claims under the California Labor Code. Ms. Villegas was an employee of ADVANCED CALL CENTER TECHNOLOGIES, LLC (“ACCT”).

The employer may be contacted directly at the address below:

ADVANCED CALL CENTER TECHNOLOGIES, LLC
1235 WESTLAKES DRIVE, SUITE 160
BERWYN, PA 19312

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

ACCT employed Ms. Villegas as an hourly paid, non-exempt employee from approximately August 2021 to July 2023. Ms. Villegas worked as a Call Center Representative for ACCT out of its location in Carmichael, California. During her employment, Ms. Villegas typically worked eight (8) hours or more per day and five (5) days or more per week. By the end of her employment, Ms. Villegas was compensated approximately \$18.18 per hour. Her job duties included, without limitation, making and responding to customer calls and assisting customers.

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

ACCT’s Company-Wide and Uniform Payroll and HR Practices

ADVANCED CALL CENTER TECHNOLOGIES, LLC is a Georgia limited liability company and provider of outsourced call center services to the financial services, mortgage, telecommunications, healthcare, cable, and retail industries with at least one (1) location in California. Upon information and belief, ACCT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Berwyn, Pennsylvania, for all non-exempt, hourly paid employees working for ACCT in California, including Ms. Villegas and other aggrieved employees. At all relevant times, ACCT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Villegas and other aggrieved employees, regardless of their location or position.

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

ACCT willfully failed to pay all overtime wages owed to Ms. Villegas and other aggrieved employees. During the relevant time period, Ms. Villegas 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

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

excess of 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.

During the relevant time period, ACCT had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Villegas 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. Because ACCT discouraged overtime accrual by, among other things, altering and/or falsifying timesheets, along with ACCT's practice of assigning of heavy workloads and productivity expectations (*see infra*), Ms. Villegas and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked. Indeed, ACCT implemented a timekeeping system that prevented employees from clocking in until at most five (5) minutes before their scheduled shifts so that they were prohibited from recording the entire time worked prior to the start of their scheduled shifts. Consequently, Ms. Villegas and other aggrieved employees performed work prior to the start of their shifts, but were unable to record this time. For example, Ms. Villegas spent approximately 10 minutes booting up her computer, logging in, and clocking in for her shift, but had no way of recording this time worked. Upon information and belief, when Ms. Villegas attempted to clock in prior to the start of her shift, the timekeeping system would not let her do so without ACCT's management's approval, which was rarely granted. As a further example, after nearly every shift, Ms. Villegas was required to remain on an ongoing call for up to 15 minutes after her scheduled shift end time, but, on information and belief, ACCT's management would alter and/or falsify time records to shave off this time Ms. Villegas spent working in order to further limit overtime accrual. Thus, ACCT failed to track the time employees spent completing their duties, and Ms. Villegas and other aggrieved employees received no compensation for this time.

Further, ACCT required that Ms. Villegas and other aggrieved employees to spend time performing work-related tasks while off the clock. For example, Ms. Villegas spent approximately three (3) hours off-the-clock setting up her workstation, including her company-issued computer, audio, and necessary software, to complete her assigned duties from home. Additionally, during the relevant time period, Ms. Villegas and other aggrieved employees were required to complete compliance modules which involved watching videos and answering questions. Due to the heavy workload, Ms. Villegas was unable to complete these modules during her scheduled shifts and, as a result, spent about 50 hours per month completing them off the clock. As a further example, during the relevant time period, ACCT implemented, on a company-wide basis, an employer-imposed requirement that Ms. Villegas and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Even though ACCT required these health screenings, ACCT did not compensate Ms. Villegas and other aggrieved employees for the time spent undergoing mandatory temperature checks and/or health screenings. Thus, ACCT failed to track the time Ms. Villegas and other aggrieved employees spent working outside of their scheduled shifts, and Ms. Villegas and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, ACCT had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, including pressuring employees to meet productivity expectations and stringent customer service metrics, such as completing at least five (5) 100% customer satisfaction calls per month and not "failing" more than two (2) calls per week. ACCT's policies and/or practices resulted in a failure to provide Ms. Villegas and other aggrieved employees with adequate meal period coverage. Moreover, ACCT also failed to adhere to a schedule for meal periods, which further caused Ms. Villegas and other aggrieved employees to not be relieved of their

duties for compliant meal periods. As a result, Ms. Villegas 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, ACCT's management interrupted Ms. Villegas's meal periods by calling her to discuss work-related matters. As a further example, on a daily basis, Ms. Villegas and other aggrieved employees cut short their meal periods due to ACCT's requirement that employees return from their meal periods five (5) to seven (7) minutes early and prepare to clock in and resume work at a specified time. Thus, Ms. Villegas and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and adhere to ACCT's practices and/or policies. ACCT did not compensate Ms. Villegas and other aggrieved employees for the time they spent working off the clock during meal periods.

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

Moreover, in addition to an hourly wage, ACCT paid Ms. Villegas and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, on information and belief, ACCT failed to incorporate all compensation, including shift differential pay, 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 Ms. Villegas and other aggrieved employees worked overtime and received these other forms of pay, ACCT failed to pay all overtime wages by paying a lower overtime rate than required.

For example, ACCT paid Ms. Villegas and other aggrieved employees shift differential pay for hours worked after midnight, which were listed on Ms. Villegas's and other aggrieved employees' wage statements as "Differential." During the pay periods that Ms. Villegas and other aggrieved employees were paid overtime wages, ACCT did not incorporate these payments into Ms. Villegas's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, ACCT paid Ms. Villegas and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. ACCT's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Villegas and other aggrieved employees on a company-wide basis.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 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 set forth above, as a result of ACCT’s policy of limiting the amount of overtime employees could accrue, ACCT required Ms. Villegas and other aggrieved employees to perform work off-the-clock. As also stated, due to ACCT’s implementation of a timekeeping system that prevented employees from clocking in until at most five (5) minutes before their scheduled shifts and ACCT’s practices of management altering and/or falsifying time records, Ms. Villegas and other aggrieved employees were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time. Furthermore, ACCT required Ms. Villegas and other aggrieved employees to work off the clock before and after their scheduled shifts to complete tasks, such as booting up their computers and logging in, completing phone calls, setting up workstations, completing compliance modules, and undergoing COVID-19 health screenings. However, ACCT failed to track all of this time Ms. Villegas and other aggrieved employees spent working off-the-clock, and thus, Ms. Villegas and other aggrieved employees received no compensation for this time.

Additionally, as set forth above, due to ACCT’s policy and/or practice of assigning heavy workloads, failure to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Villegas 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 during meal periods, time for which they were not paid.

Thus, ACCT did not pay minimum wages for all hours worked by Ms. Villegas and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, ACCT 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, ACCT regularly failed to pay at least minimum wages to Ms. Villegas and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Villegas 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.

During the relevant period, as stated, ACCT had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, including pressuring employees to meet productivity expectations and strict customer service metrics, discouraging employees from incurring overtime, and failing to adhere to a schedule for meal periods, which resulted in a lack of meal period coverage and prevented Ms. Villegas and other aggrieved employees from taking all timely meal periods to which they were entitled. As a result, Ms. Villegas and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, as stated, Ms. Villegas had her meal periods interrupted in order to respond to calls from ACCT's management regarding work-related matters. As a further example, Ms. Villegas sometimes could not take her meal periods until more than five (5) hours into her shifts, when customer phone calls took longer than anticipated, but needed to be completed before she could take her meal period.

Moreover, ACCT 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. Ms. Villegas 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.

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

Furthermore, ACCT 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, Ms. Villegas and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that ACCT did pay Ms. Villegas and other aggrieved employees premium pay for missed, late, and interrupted meal periods, ACCT did not pay Ms. Villegas and other aggrieved employees at the correct rate of pay for premiums because ACCT systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ACCT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Villegas 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).

During the relevant time period, ACCT regularly failed to authorize and permit Ms. Villegas and other 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, ACCT's policies and/or practices of assigning heavy workloads, including adhering to productivity expectations and meeting customer metrics, prevented Ms. Villegas and other aggrieved employees from being relieved of all duty in order to take their rest periods. ACCT also failed to adhere to a schedule for rest periods, which, coupled with ACCT's failure to provide adequate rest period coverage, further led to Ms. Villegas and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, ACCT maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Villegas and/or other aggrieved employees remain on the premises during their rest periods. Because Ms. Villegas and/or other aggrieved employees were restricted from leaving ACCT's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, ACCT effectively maintained control over Ms. Villegas and/or other aggrieved employees during rest periods.

As a result of ACCT's practices and policies, Ms. Villegas and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Ms. Villegas had to forego some of her rest periods in order to handle the heavy workload and due to the lack of coverage. When Ms. Villegas was able to take her rest periods, they were interrupted by ACCT's management calling Ms. Villegas to discuss work-related matters.

ACCT has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Villegas and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ACCT did pay Ms. Villegas and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ACCT did not pay Ms. Villegas and other aggrieved employees at the correct rate of pay for premiums because ACCT failed

to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.

Accordingly, ACCT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Villegas 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. ACCT has not provided Ms. Villegas 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, ACCT has knowingly and intentionally provided Ms. Villegas and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ACCT issued uniform wage statements to Ms. Villegas and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, ACCT violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because ACCT did not record the time Ms. Villegas and other aggrieved employees spent working off-the-clock, ACCT did not list the correct amount of gross wages and net wages earned by Ms. Villegas and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, ACCT failed to accurately list the total number of the hours worked by Ms. Villegas 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 ACCT did not calculate Ms. Villegas's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, ACCT 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). ACCT also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, 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 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). At all relevant times, and in violation of Labor Code section 1174(d), ACCT willfully failed to maintain accurate payroll records for Ms. Villegas 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. During the relevant time period, ACCT engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Villegas and other aggrieved employees, in violation of section 1198. Furthermore, in light of ACCT’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, ACCT kept no records of meal start and end times for second meal periods.

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

Ms. Villegas 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, ACCT failed to pay Ms. Villegas and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Villegas 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.

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

Ms. Villegas 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 §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

During the relevant time period, ACCT had an agreement with a payroll service provider, Dayforce Wallet, for the issuance of payroll debit cards to employees, including Ms. Villegas and other aggrieved employees, to discharge their wage payment obligations to their employees. Under

ACCT's payroll debit card program, Ms. Villegas and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. Ms. Villegas and other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, which resulted in a discount in their pay. For example, Ms. Villegas was subjected to a fee of \$2.50 per transaction when withdrawing her wages from an out-of-network ATM, and was restricted to a \$500 daily withdrawal limit. Thus, ACCT's payroll debit card program was and continues to be unlawful as it did not give Ms. Villegas and other aggrieved employees access to their entire wages without discount and without delay.

Additionally, during the relevant time period, ACCT had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Ms. Villegas received her final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, ACCT automatically enrolled Ms. Villegas in its payroll debit card program for the purpose of issuing Ms. Villegas's final wages to her without prior, voluntary approval from Ms. Villegas. Thus, ACCT's payroll debit card program was and continues to be unlawful as it does not give employees the choice as to whether they would like to receive their wages on a payroll debit card or via some other payment method.

California courts recognize a policy favoring the full and prompt payment of wages to employees. ACCT's payroll card program is inconsistent with this policy because ACCT's program is involuntary and denies Ms. Villegas and other aggrieved employees of easy access to their wages. Thus, ACCT's company-wide payroll debit card program violates California Labor Code sections 212 and 213. Ms. Villegas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages only if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, ACCT unlawfully deducted a portion of wages previously paid to Ms. Villegas and other aggrieved employees in violation of California Labor Code section 221. On information and belief, ACCT systematically, and on a company-wide basis, provided Ms. Villegas and other aggrieved employees with payroll debit cards as payment of their wages. Under ACCT's payroll debit card program, Ms. Villegas and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, as described above, Ms. Villegas and other aggrieved employees were required to pay out-of-network ATM withdrawal fees, in-network ATM fees from third parties, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Ms. Villegas and other aggrieved employees resulted in a discount of their wages.

ACCT's payroll debit card program, which resulted in a discount of wages to employees, are tantamount to taking deductions from Ms. Villegas's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in

violation of Labor Code sections 221 and 224. Ms. Villegas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

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

During the relevant time period, ACCT willfully and systematically issued payroll debit cards to Ms. Villegas and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. ACCT's payroll debit card program resulted in the payment of less than statutorily required wages to Ms. Villegas and other aggrieved employees. Thus, ACCT paid Ms. Villegas and other aggrieved employees lower wages than those they were entitled to while purporting that Ms. Villegas and other aggrieved employees were properly paid.

ACCT's failure to pay Ms. Villegas and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Ms. Villegas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave and Provide Written Notice of Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

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

During the relevant time period, ACCT did not pay Ms. Villegas and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, ACCT paid Ms. Villegas

and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ACCT failed to incorporate all remunerations, including shift differential pay, incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Ms. Villegas and other aggrieved employees took sick leave and received these other forms of pay, ACCT failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, ACCT paid Ms. Villegas and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

Moreover, during the relevant time period, ACCT failed, on a company-wide basis, to provide Ms. Villegas and other aggrieved employees with written notice on all wage statements that listed the amount of paid sick leave or COVID-19 supplemental paid sick leave used by them.

ACCT's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Villegas and other aggrieved employees on a company-wide basis in violation of California Labor Code section 246(l). Moreover, ACCT's systematic failure to provide written notice of paid sick leave or COVID-19 supplemental paid sick leave benefits to Ms. Villegas and other aggrieved employees is in violation of Labor Code section 248.6(d).

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

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, ACCT, on a company-wide basis, required Ms. Villegas and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Ms. Villegas was required to download an authenticator mobile application on her personal mobile device, and to use her mobile data for a two-step verification process in order to log into her work computer. Ms. Villegas and other aggrieved employees were not compensated for the cost of the mobile data used to download and access the application to complete the two-step verification process. As a further example, ACCT's management contacted Ms. Villegas on her personal cellular phone regarding work-related matters. Furthermore, Ms. Villegas and other aggrieved employees were required to use their personal internet access plans in order to perform their job duties. Although ACCT required Ms. Villegas and other aggrieved employees to use their personal mobile devices, mobile data, and/or internet access to carry out their work-related duties, ACCT failed to reimburse them for their costs incurred.

Second, during the relevant time period, ACCT required Ms. Villegas and other aggrieved employees to purchase equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Villegas was required to purchase for \$30 two (2) laptop chargers throughout her employment because the charger provided by ACCT did not work. As a further example, on information and belief, other aggrieved employees were required to purchase office equipment, HDMI converters, desks, chairs, and office supplies but were not reimbursed for their expenses. Although ACCT required Ms. Villegas and other aggrieved employees to purchase equipment and supplies to carry out their work-related responsibilities, ACCT failed to reimburse them for their out-of-pocket costs.

ACCT could have provided Ms. Villegas and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, computer-related equipment, and office supplies and equipment. Or, ACCT could have reimbursed employees for their mobile device usage, internet access, and equipment and supply expenses. Instead, ACCT passed these operating costs off onto Ms. Villegas and other aggrieved employees. At all relevant times, Ms. Villegas did not earn at least two (2) times the minimum wage.

Thus, ACCT 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. Ms. Villegas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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, ACCT failed, on a company-wide basis, to provide written notice to Ms. Villegas and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). ACCT's failure to provide Ms. Villegas and other aggrieved employees with written notice of basic information regarding their employment with ACCT is in violation of Labor Code section 2810.5.

Ms. Villegas 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.” ACCT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Villegas’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Villegas seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Villegas, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against ACCT for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,



Ninel Kocharyan

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

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PROOF OF SERVICE

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

On **January 12, 2024**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

CT Corporation System c/o Jessie Gastelum
330 North Brand Boulevard, Suite 700
Glendale, CA 91203

Attorneys for Defendant:
ADVANCED CALL CENTER
TECHNOLOGIES

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

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

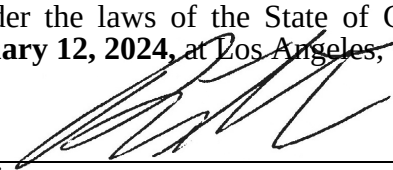
☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 12, 2024**, at Los Angeles, California.

Riley McIntire
Type/Print Name



Signature