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and others similarly situated

BLALOCK DYE LAW, LLP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

LAURA PROVONSHA, on behalf of herself and others similarly situated;

PLAINTIFF,

v.

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., a California Corporation; JACK DANGERMOND, an individual; LAURA DANGERMOND, an individual; and DOES 1 through 10,

DEFENDANTS.

Case No. CVRI2401687

CLASS ACTION COMPLAINT

1. Failure to Pay Wages Plus Interest (Cal. Labor Code §§ 203, 558.1, 1194);
2. Failure to Pay Overtime and Double Time Wages (Cal. Labor Code § 510)
3. Failure To Provide One Day's Rest In Seven Days (Cal. Labor Code §§ 551, 552, and 852);
4. Unreimbursed Business Expenses (Cal. Labor Code § 2802);
5. Failure to Provide Meal Periods and Unpaid Meal Period Premiums (Cal. Labor Code § 226.7);
6. Failure to Provide Rest Breaks and Unpaid Rest Break Premiums (Cal. Labor Code § 226.7);
7. Noncompliant Wage Statements (Cal. Labor Code § 226(a));
8. Deficient Pay Penalties (Cal. Labor Code

§ 210);

9. Failure to Maintain Payroll Records (Cal. Labor Code § 226.3 and 1174(d));
10. Violation of Unfair Competition (Bus. & Prof. Code § 17200, et seq); and
11. Failure to Prevent Discrimination and Harassment (Gov. Code § 12940 (k);
12. Disability Discrimination (Gov. Code, § 12940, subd. (a));
13. Failure to Provide Reasonable Accommodation (Gov. Code Section 12940, subd. (m));
14. Failure to Engage in an Interactive Process (Gov. Code Section 12940, subd. (n));
15. Failure to Prevent Discrimination (Gov. Code, § 12940, subd. (k));
16. California Private Attorneys General Act of 2004 (Cal. Labor Code § 2698, et. seq.).

[Filed with Exhibit 1]

DEMAND FOR JURY TRIAL

COMES NOW, PLAINTIFF Laura Provonsha, on behalf of herself and on behalf of other similarly situated individuals and aggrieved current and former employees, alleges as follows:

I. INTRODUCTION

1. PLAINTIFF Laura Provonsha ("PLAINTIFF"), on behalf of herself and others similarly situated, by and through her attorneys, hereby alleges the following against Defendants Environmental Systems Research Institute, Inc. ("ESRI"), Jack Dangermond ("Jack"), Laura Dangermond ("Laura"), and DOES 1 through 10 inclusive (collectively, "DEFENDANTS"), and each of them, have engaged in a pattern of wage and hour violations under the California Labor Code, the Industrial Welfare Commission ("IWC") Wage Orders ("Wage Orders"), and the Fair Employment and Housing Act ("FEHA"), codified at California Government Code, § 12960, et seq.

2. PLAINTIFF alleges that DEFENDANTS decreased their employment-related costs at their business by willfully and systematically violating California wage and hour laws.

3. DEFENDANT ESRI is a global market leader in geographic information systems (GIS) software, location intelligence, and mapping. DEFENDANTS maintained a systemic scheme of wage abuse and unlawful employment practices against PLAINTIFF and other similarly situated employees.

4. ESRI wrongful acts include, but are not limited to:

a. Failure to pay all minimum and regular wages;

b. Failure to timely pay all wages;

c. Providing false and deceptive wage statements;

d. Failure to afford employees uninterrupted duty-free meal periods and rest breaks;

e. Failure To Provide One Day's Rest In Seven;

f. Failure to pay meal period and rest break premiums;

g. Failure to pay all overtime and double-time wages;

h. Failure to maintain timekeeping and payroll records;

i. Failing to reimburse business expenses; and

j. Failure to prevent discrimination and harassment.

5. PLAINTIFF individually, and on behalf of those similarly situated, seeks restitution and monetary relief against DEFENDANTS to recover, among other things, unpaid wages and benefits, interests, attorney's fees, penalties, injunctive relief, and costs and expenses pursuant to the applicable California Labor Code Sections, the associated Wage Orders, Government Code, California Private Attorneys General Act of 2004 ("PAGA"), the Fair Employment and Housing Act, as well as other applicable laws against DEFENDANTS, and alleges as follows:

I. <u>PARTIES</u>

A. PLAINTIFF Laura Provonsha

6. PLAINTIFF Laura Provonsha is a resident of Riverside County in the State of California. PLAINTIFF is a woman employed by DEFENDANTS as an Asset Manager, working remotely from her home residence in Anza, California, in the County of Riverside.

B. DEFENDANT Environmental Systems Research Institute, Inc.

7. DEFENDANT Environmental Systems Research Institute, Inc. ("ESRI"), at all times herein mentioned, was and is, a California corporation qualified to do business in California, including the County of Riverside.

8. ESRI employed PLAINTIFF from June 4, 2007, until present. PLAINTIFF is currently on a medical leave of absence.

9. DEFENDANT ESRI is an employer as defined in Title 8 of Cal. Code of Regulations, §§ 11040 and 11090 (codifying Wage Order No. 4-2001) and the Cal. Labor Code.

10. At all times herein set forth, the Wage Orders, including, without limitation, Wage Order 4-2001, was, upon information and belief, applicable to PLAINTIFF's employment.

11. At all relevant times, ESRI is PLAINTIFF's "employer" within the meaning of all applicable California laws and statutes.

12. At all relevant times, ESRI is an employer as that term is defined under 2 Cal. Code Regs. §§ 11008(d)(1), subjecting each of them to the terms and obligations of the FEHA, codified at California Government Code, §§ 12960, et seq.

13. At all relevant times, ESRI controlled and directed the terms of employment and compensation of PLAINTIFF and other aggrieved current and former employees.

14. At all relevant times, ESRI maintained control, oversight, and direction of PLAINTIFF, including timekeeping, work allocation, task supervision, monitoring work product, payroll, and other employment practices that applied to the other aggrieved current and former employees.

15. At all relevant times, ESRI contacted PLAINTIFF and other aggrieved current and former employees directly regarding the quality of their performance.

16. ESRI applied the same employment policies, practices, and procedures to PLAINTIFF and other aggrieved current and former employees.

17. For these reasons, ESRI is an employer as defined in Wage Order No. 4-2001. At all times herein set forth, the Wage Orders, including, without limitation, Wage Order 4, were, upon information and belief, applicable to PLAINTIFF's employment and that of other aggrieved current and former employees.

C. DEFENDANT Jack Dangermond

18. DEFENDANT Jack Dangermond ("Jack") is ESRI's founder, president, one of two shareholders, and its Chief Executive Officer.

19. Jack is an employer as defined in Title 8 of Cal. Code of Regulations, §§ 11040 and 11090 (codifying Wage Order No. 4-2001) and the Cal. Labor Code.

20. At all relevant times, Jack was PLAINTIFF's "employer" within the meaning of all applicable California laws and statutes.

21. At all relevant times, Jack controlled ESRI's operations, policies, and practices in a joint fashion without any meaningful distinctions between it and the other persons, subsidiaries, and/or related entities described herein.

22. Indeed, at all relevant times, Jack created, implemented, and disseminated all compensation and employment policies at issue in this case.

23. At all relevant times, Jack controlled and directed the terms of employment and compensation of PLAINTIFF and other aggrieved current and former employees.

24. At all relevant times, Jack maintained and exercised the power to hire, fire, discipline, and promote PLAINTIFF and other aggrieved current and former employees.

25. At all relevant times, Jack maintained control, oversight, and direction of PLAINTIFF and others similarly situated, including timekeeping, work allocation, task supervision, monitoring work product, payroll, and other employment practices that applied to them.

26. Jack applied the same employment policies, practices, and procedures to PLAINTIFF and other aggrieved current and former employees.

27. For these reasons, Jack is an employer as defined in Wage Order No. 4-2001. At all times herein set forth, the Wage Orders, including, without limitation, Wage Order 4, were, upon information and belief, applicable to PLAINTIFF's employment and that of other aggrieved current and former employees.

28. At all relevant times, DEFENDANTS ESRI, Jack, and Laura are individually, jointly, and severally liable to PLAINTIFF and other aggrieved current and former employees pursuant to Cal. Labor Code § 558.1 because they caused Cal. Labor Code and Wage Order violations as alleged herein.

D. DEFENDANT Laura Dangermond

29. DEFENDANT Laura Dangermond ("Laura") is ESRI's co-founder and one of two shareholders.

30. Laura is an employer as defined in Title 8 of Cal. Code of Regulations, §§ 11040 and 11090 (codifying Wage Order No. 4-2001) and the Cal. Labor Code.

31. At all relevant times, Laura was PLAINTIFF's "employer" within the meaning of all applicable California laws and statutes.

32. At all relevant times, Laura controlled ESRI's operations, policies, and practices jointly without any meaningful distinctions between it and the other persons, subsidiaries, and/or related entities described herein.

33. Indeed, at all relevant times, all compensation and employment policies at issue, in this case, were created, implemented, and disseminated by Laura.

34. At all relevant times, Laura controlled and directed the terms of employment and compensation of PLAINTIFF and other aggrieved current and former employees.

35. At all relevant times, Laura maintained and exercised the power to hire, fire, discipline, and promote PLAINTIFF and other aggrieved current and former employees.

36. At all relevant times, Laura maintained control, oversight, and direction of PLAINTIFF and others similarly situated, including timekeeping, work allocation, task supervision, monitoring work product, payroll, and other employment practices that applied to them.

37. Laura applied the same employment policies, practices, and procedures to PLAINTIFF and other aggrieved current and former employees.

38. For these reasons, Laura is an employer as defined in Wage Order No. 4-2001. At all times herein set forth, the Wage Orders, including, without limitation, Wage Order 4, were, upon information and belief, applicable to PLAINTIFF's employment and that of other aggrieved current and former employees.

39. At all relevant times, DEFENDANTS ESRI, Jack, and Laura are individually, jointly, and severally liable to PLAINTIFF and other aggrieved current and former employees pursuant to Cal.

Labor Code § 558.1 because they caused Cal. Labor Code and Wage Order violations as alleged herein.

E. DEFENDANT DOES 1 through 50, Inclusive

40. PLAINTIFF is informed and believes and thereon alleges that at all times herein mentioned, DEFENDANTS DOES 1 through 50, inclusive, were acting within the course and scope of their employment.

41. The true names and/or capacities, whether individual, agent, employee, servant, partner, joint venture, joint employer, representative, associate, corporate, agency, or otherwise, of DEFENDANTS named herein as DOES 1 through 10, inclusive, are unknown to PLAINTIFF who therefore sues these DEFENDANTS, and each of them, by such fictitious names pursuant to Code of Civil Procedure § 474. PLAINTIFF is informed and believes and thereon alleges that each of the fictitiously named DEFENDANTS are responsible in some manner for the events and happenings herein referred to and caused injury and damages proximately thereby to PLAINTIFF as herein alleged. (Collectively, DEFENDANT ESRI, Jack Dangermond, DEFENDANT Laura Dangermond, and Doe DEFENDANTS are collectively referred to herein as "DEFENDANT" or "DEFENDANTS").

42. In doing the things hereinafter alleged, the individual DEFENDANTS, whether named or unnamed, were acting in concert with and under the direction, or with the express or implied ratification, of their superiors, supervisors, and the employer and other named or unnamed DEFENDANTS. PLAINTIFF is informed and believes and thereon alleges that the conduct of the individually named and the unnamed DEFENDANTS was known to the other DEFENDANTS, and such conduct was expressly or impliedly condoned and ratified by the named DEFENDANTS. PLAINTIFF is further informed and believes that the named DEFENDANTS failed to criticize, censure, terminate, suspend, or otherwise take any action against the other DEFENDANTS once informed of their conduct.

43. PLAINTIFF is informed and believes, and thereupon alleges that at all times relevant to the facts hereinafter alleged, each DEFENDANT was the owner, agent, alter ego, employee, or employer of each of its co-DEFENDANTS, and in doing the acts hereinafter alleged, DEFENDANTS were acting within the scope of that ownership, agency, or employment, and with the consent and

permission of their co-DEFENDANTS, and each of them, and that said acts were ratified by said DEFENDANTS, co-DEFENDANTS, and each of them.

II. JURISDICTION AND VENUE

44. The Court has jurisdiction over this action pursuant to the California State Constitution, Article VI, § 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

45. This Court has jurisdiction over DEFENDANTS because the acts that gave rise to this complaint occurred in the State of California, Riverside County.

46. Venue is proper in this Court because, upon information and belief, DEFENDANTS employed PLAINTIFF and transact business in the County of Riverside. The majority of acts and omissions alleged herein, including the injuries suffered relating to PLAINTIFF, occurred within the County of Riverside.

47. Damages in this matter exceed and are greater than $25,000.00 and are thereby subject to this Court's unlimited jurisdiction.

III. STATUTE OF LIMITATIONS TOLLING

48. In May 2020, the California Judicial Council approved a revision to Emergency Rule 9 regarding the statute of limitations for the filing of civil cases. The statute of limitations and repose for civil causes of action that exceed 180 days was suspended from April 6, 2020, to October 1, 2020 (or 178 days). Application of Emergency Rule 9 ensures that PLAINTIFF can fully recover all alleged damages.

49. PLAINTIFF filed this action on March 28, 2024. When applying COVID tolling and considering, for example, the four-year statute of limitations as provided in Bus. & Prof. Code § 17200, *et seq.*, the statutory period for claims alleged herein commences no later than October 1, 2019. PLAINTIFF reserves the right to allege that an earlier date applies to the accrual of the claims alleged herein.

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IV. CLASS ACTION ALLEGATIONS

50. PLAINTIFF brings this action on her own behalf and on behalf of all other members of the general public similarly situated, and thus, seeks class certification under Cal. Code of Civil Procedure § 382.

51. The proposed ESRI Class is defined as follows: all current and former persons who worked for DEFENDANTS within the State of California within the last four years from the date of PLAINTIFF's Complaint on March 29, 2024, as extended by Judicial Council Emergency Rule 9, or no later than October 1, 2019, as described herein (the "Class Members").

52. PLAINTIFF seeks to represent a class of DEFENDANT's non-exempt, hourly employees who fall into any of the following sub-classes composed of and defined as follows:

a. **Failure To Pay All Wages Earned Sub-class:** All current and former non-exempt, hourly paid employees who worked for DEFENDANTS at any time during the statutory period and who were not compensated for all hours worked;

b. **Unpaid Wages (Overtime/Double Time) Sub-class:** All current and former non-exempt, hourly paid employees who worked for DEFENDANTS at any time during the statutory period and who were not paid all overtime and/or double time wages earned;

c. **Business Expense Sub-class:** All current and former non-exempt, hourly paid employees who worked for DEFENDANTS at any time during the s**tatutory** period and who were not reimbursed for their reasonably incurred business expenses;

d. **Failure To Pay Missed Meal Period Earned Sub-class**: All current and former non-exempt, hourly-paid employees who worked for DEFENDANTS at any time during the statutory period and who were not paid one hour of premium pay for each day that a lawfully compliant meal period was not provided under Cal. Labor Code § 226.7, and Industrial Wage Order No. 4-2001 § 12;

e. **Failure To Pay Missed Meal Period Premium Pay Earned Sub-class**: All current and former non-exempt, hourly paid employees who worked for DEFENDANTS at any time during the statutory period and who were not paid one hour of premium pay for each day that a lawfully compliant meal period was not provided under Cal. Labor Code § 226.7, and Industrial Wage Order No. 4-2001 § 12;

f. **Failure To Pay Missed Rest Period Earned Sub-class**: All current and former non-exempt, hourly-paid employees who worked for DEFENDANTS at any time during the statutory period and who were not paid one hour of premium pay for each day that a lawfully compliant rest period was not provided under Cal. Labor Code § 226.7, and Industrial Wage Order No. 4-2001 § 12;

g. **Failure To Pay Rest Period Premium Pay Earned Sub-class**: All current and former non-exempt, hourly paid employees who worked for DEFENDANTS at any time during the statutory period and who were not paid one hour of premium pay for each day that a lawfully compliant rest period was not provided under Cal. Labor Code § 226.7, and Industrial Wage Order No. 4-2001 § 12;

h. **Seventh Day of Rest Sub-class**: All current and former non-exempt, hourly paid employees who worked for DEFENDANTS at any time during the statutory and who were not provided nor receive one day's rest in seven in violation of Labor Code §§ 550-558.1;

i. **Waiting Time Sub-class:** All current and former non-exempt, hourly-paid employees who worked for DEFENDANTS and were terminated or resigned at any time during the statutory period and who were not paid all wages required under Cal. Labor Code §§ 201, 202, and 203;

j. **Unfair Competition Law Sub-class:** All current and former non-exempt, hourly paid employees who worked for DEFENDANT at any time during the statutory period and who are entitled to equitable and/or restitutionary relief due to DEFENDANTS' unlawful business practices, including, but not limited to, failure to pay all wages earned, and failure to pay overtime and/or double time wages;

k. **PAGA Sub-class:** All current and former non-exempt, hourly paid employees who worked for DEFENDANTS at any time during the statutory period and who suffered violations of Cal. Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 1174(d), and 1198, and Exhibit 1.

53. **Numerosity**: The Class Members are so numerous that the joinder of all Class Members is impracticable. The membership of the entire class is unknown to PLAINTIFF at this time; however, the class is estimated to be greater than 100 individuals, and the identity of such membership is readily ascertainable by inspection of ESRI records.

54. **Typicality:** PLAINTIFF's claims are typical of all other Class Members as demonstrated herein. DEFENDANTS employed PLAINTIFF, and the alleged violations were committed against her during their time of employment, and she is, therefore, representative of the class of other alleged injured employees. PLAINTIFF suffered the actual injuries for which she seeks to represent the class. PLAINTIFF will fairly and adequately protect the interests of the other Class Members with whom they have a well-defined community of interest.

55. **Adequacy**: PLAINTIFF will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. PLAINTIFF has no interest that is antagonistic to the other Class Members. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. PLAINTIFF has incurred, and during the pendency of this action, will continue to incur, costs and attorney fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

56. **Superiority:** a class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

57. Public policy considerations: certification of this lawsuit as a class action will advance public policy objectives. Unfortunately, employers in California routinely violate state employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the Class Members who are not named in the Complaint anonymity that allows for the vindication of their rights.

58. There are common questions of law and fact as to the Class Members that predominate over questions affecting only individual members. The common questions of law and fact, among others, exist as to the members of each class:

a. Whether DEFENDANTS' failure to pay wags, without abatement or reduction, in accordance with the California Labor Code, was willful;

b. Whether DEFENDANTS had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked and missed (short, late, or interrupted) meal and rest periods in violation of California law;

c. Whether DEFENDANTS required PLAINTIFF and the other Class Members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to PLAINTIFF and the other Class Members;

d. Whether DEFENDANTS deprived PLAINTIFF and the other Class Members of meal and/or rest periods or required PLAINTIFF and the other Class Members to work during meal and/or rest periods without compensation;

e. Whether DEFENDANTS failed to pay minimum wages to PLAINTIFF and the other Class Members for all hours worked;

f. Whether DEFENDANTS failed to pay all wages due to PLAINTIFF and the other Class Members within the required time upon their discharge or resignation;

g. Whether DEFENDANTS failed to timely pay all wages due to PLAINTIFF and the other Class Members during their employment;

h. Whether DEFENDANTS complied with wage reporting as required by the Cal. Labor Code, including, *inter alia*, § 226;

i. Whether DEFENDANTS failed to reimburse PLAINTIFF and the other Class Members for necessary business-related expenses and costs;

j. Whether DEFENDANTS' conduct was willful or reckless;

k. Whether DEFENDANTS engaged in unfair business practices in violation of Cal. Bus. & Prof. Code §17200 et seq.;

l. The appropriate amount of damages, restitution, and/or monetary penalties resulting from DEFENDANTS' violation of California law; and

m. Whether PLAINTIFF and the other Class Members are entitled to compensatory damages pursuant to the Cal. Labor Code.

59. PLAINTIFF reserves the right to redefine the definitions of the Class Members or Sub-classes as appropriate based on further investigation, discovery, and specific theories, of liability.

V. **PAGA ALLEGATIONS**

60. At all times set forth herein, PAGA was applicable to and governed DEFENDANT ESRI's employment of PLAINTIFF and other current and former aggrieved employees.

61. At all times set forth herein, PAGA states that any provision of the Cal. Labor Code that authorizes the levying of a civil penalty, including but not limited to: unpaid wages, timely payment of wages, , unpaid overtime wages, deficient pay, wage statement violations, and waiting time penalties to be assessed and collected by the Cal. Labor and Workforce Development Agency ("LWDA") for violations of Cal. Labor Code may, as an alternative, to be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in Cal. Labor Code § 2699.3.

62. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

63. DEFENDANT ESRI employed PLAINTIFF and the alleged violations it committed against her occurred during her time of employment, therefore, she is an aggrieved employee. PLAINTIFF and the other employees are "aggrieved employees" as defined by Cal. Labor Code § 2699(c) in that they are current or former ESRI employees and one or more of the alleged violations were committed against them.

64. Pursuant to Cal. Labor Code §§ 2699.3 and 2699.5, aggrieved employees, including PLAINTIFF, may pursue a civil action arising under PAGA against ESRI after the following requirements have been met:

a. The aggrieved employee shall be given written notice by online submission ("Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the Cal. Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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b. The LWDA shall provide notice ("LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to Cal. Labor Code § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

65. Prior to filing this action, PLAINTIFF provided written notice on November 14, 2023, by online submission to the LWDA, and by certified mail to DEFENDANT ESRI of the specific provisions of the California Labor Code they are alleged to have violated, including the facts and theories to support the alleged violations. A true and correct copy of the PLAINTIFF's November 14, 2023, written notice is appended as **Exhibit 1**. More than sixty-five (65) days of the date of the submission of PLAINTIFF's Notice has passed and the LWDA elected to not take any action. PLAINTIFF has complied with her statutory notice obligations.

66. The PAGA Period for which PLAINTIFF seeks penalties for herself and all aggrieved employees is from March 29, 2023, through the date of the final approval of the PAGA claims.

67. Therefore, the administrative prerequisites under Cal. Labor Code § 2699.3(a) to recover civil penalties, in addition to other remedies, for violations of Cal. Labor Code §§ 98.6, 201, 202, 203, 204, 210, 216, 218.5, 223, 225.5, 226, 226.3, 226.7, 248.6, 510, 512(a), 550-558.1, 558, 1102.5, 1194, 1197, 1197.1, 1198, 2753, 2800, 2802 and 2810.3 are satisfied.

VI. <u>EXHAUSTION OF ADMINISTRATIVE REMEDIES</u>

68. PLAINTIFF fully exhausted her administrative remedies, to the extent they are required, and has timely filed this action.

69. Alternatively, PLAINTIFF alleges she is exempt from exhausting any internal or external administrative remedies.

VII. <u>FACTUAL ALLEGATIONS</u>

A. Background Information

70. PLAINTIFF began her employment with the DEFENDANTS in 2007 after Laura interviewed PLAINTIFF, as a non-exempt employee. Her job duties include ensuring accurate tracking of cost-effective procurement, and compliance with licensing agreements. Additionally, PLAINTIFF's duties also involve serving as the main point of contact for software entitlements, leading programs for managing software and mobile device assets, and collaborating with stakeholders to enhance core IT asset management processes. PLAINTIFF is a resident of Riverside County, California.

71. During the entirety of PLAINTIFF's tenure which still exists today, DEFENDANTS upheld a practice wherein PLAINTIFF and all other non-exempt employees adhered to a standardized method of timekeeping that did not entail maintaining concurrent accurate time records of their worked hours.

72. PLAINTIFF and other class members, in line with this established practice, routinely deferred the recording of her work hours, including meal periods, until the conclusion of each payroll cycle, subsequently submitting her timesheets. This widely adopted practice within the organization compromised the accurate recording of all work hours worked for all employees. This is seen by non-exempt employees regularly recording precisely 30-minute meal periods, no more and no less, regardless of the length of time that may or may not have been taken.

73. Moreover, Defendants failed to provide lawfully compliant written notice to PLAINTIFF or the other Class Members that they were entitled to both a duty free and uninterrupted meal and rest periods. Such that they were permitted to not respond to email, text messages, or phone calls during their breaks. As a standard course of PLAINTIFF's workday, if she did take a meal or rest break, it was unlawful because she understood that Defendants required her and other class members to respond to emails, text message, or phone calls. Defendants' policies do not include any mechanism for reporting non-compliant meal or rest periods that were interrupted by work demands.

74. PLAINTIFF and other non-exempt Class Members frequently found themselves working for precisely 6.00 hours without taking a lawful meal period, thus violating California labor laws. Despite PLAINTIFF's commitment to working through lunch, the absence of contemporaneous timesheets hindered the accurate recording of her time spent working.

75. Furthermore, at no point during PLAINTIFF's tenure, nor that of any other non-exempt Class Member, did they sign Meal Period Waiver Forms. In cases where the workday does not exceed six hours, California labor laws offer a degree of flexibility, allowing employees to voluntarily waive their right to a meal break, provided that mutual consent is established between the employee and employer.

76. PLAINTIFF and other non-exempt Class Members did not sign Meal Break Waiver Forms, because DEFENDANTS did not provide a Meal Break Waiver for PLAINTIFF and other non-exempt Class Members to sign.

77. Additionally, when PLAINTIFF and other non-exempt Class Members missed a required meal period due to the unlawful timekeeping practices, DEFENDANTS failed to provide the required meal period premium as mandated by California labor laws. This omission not only led to the violation of wage and hour regulations but also exacerbated the inaccuracy of wage statements for all non-exempt employees.

78. The combined effect of inaccurate timekeeping and the absence of proper meal period premium payments resulted in wage statements that failed to reflect the true compensation earned by the PLAINTIFF and all other non-exempt Class Members.

79. In 2020, when the COVID-19 pandemic precipitated a seismic shift in traditional workplace dynamics, all DEFENDANTS' employees were abruptly directed to transition to remote work from home, a practice that remains in force to the present day. PLAINTIFF worked from her home in Riverside County and has for the past four years. In that regard all of the Labor Code violations PLAINTIFF suffered occurred in Riverside County.

80. Despite ordering PLAINTIFF and Class Members to work from DEFENDANTS actually knew PLAINTIFF and Class Members were incurring business expenses related to the performance of their job duties. DEFENDANTS intentionally elected to not reimburse PLAINTIFF or the Class Members for all business expenses they incurred while working from home. Those expenses included but were not limited to home internet, fair rental of home office space, utilities, phone, office supplies, and elevated costs associated with utilizing PLAINTIFF and Class Members' personal

equipment to perform their job duties.

81. Moreover, the flawed timekeeping procedure, which had long persisted, remained unchanged. Consequently, employees were denied meal period premium pay when they worked for extended hours, often surpassing 6 hours without a mandated meal break, and, in some instances, working up to 12 hours without the required second meal period. Furthermore, PLAINTIFF and other non-exempt Class Members were made to work seven consecutive days without a day off, in violation of California labor laws.

82. As part of her job duties and responsibilities, PLAINTIFF and other non-exempt Class Members routinely received texts on their personal cell phone from their supervisor and other employees to discuss work-related matters both during work hours and after work hours. PLAINTIFF and Class Members were thus required to work off-the-clock for which they were not paid.

83. DEFENDANTS relied on PLAINTIFF, a loyal tenured employee, to ensure their business needs were met, which required PLAINTIFF to respond to supervisors, management and other DEFENDANTS' employees during meal periods, rest breaks, and work off-the-clock. At all times during PLAINTIFF'S employment, PLAINTIFF was entitled to, but did not receive uninterrupted meal periods and rest breaks.

84. PLAINTIFF, and other non-exempt Class Members, was not paid for the time she spent reviewing and responding to text messages from her supervisor relating to work for DEFENDANTS while off-the-clock.

85. PLAINTIFF, and other Class Members, was required to work remotely for four (4) years utilizing their personal internet. PLAINTIFF and other Class Members never received any reimbursement from DEFENDANTS for the personal use of their internet to conduct business for DEFENDANTS.

86. Additionally, during the COVID-19 pandemic and the transition to remote work, a mandated requirement, California COVID-19 Supplemental Pay, emerged. Despite the legal requirement for employers to include such payments on wage statements or in another written form, DEFENDANTS failed to comply with this mandate. Consequently, PLAINTIFF and other non-

exempt Class Members were deprived of the transparency and documentation necessary to accurately assess their Supplemental Pay in accordance with the law.

87. Throughout PLAINTIFF's employment, ESRI and the individual DEFENDANTS required PLAINTIFF and all other non-exempt employees to experience actions illegal under the California Labor Code. In September 2023, PLAINTIFF formally requested in writing a disability accommodation through ESRI's Human Resources ("HR") services. Despite repeated inquiries, PLAINTIFF received no response throughout September to December 2023. Additionally, in December 2023, ESRI notified all employees of a change in HR service providers. Upon transition, it was discovered that the PLAINTIFF's accommodation request was missing from her personnel file. Despite this, there was still no response to the PLAINTIFF's request in January to March 2024. ESRI thus failed to engage at all in the interactive process with PLAINTIFF for her request of an accommodation for her disability.

88. In early March 2024, a department-wide email specifically directed the PLAINTIFF to return to work within five days. Subsequently, due to the ongoing stress directly related to the accommodation request process, PLAINTIFF's physician placed her on a 60-day disability leave of absence, effective March 25, 2024. ESRI's failure to engage with the PLAINTIFF regarding her accommodation request and the subsequent directive to return to work without addressing her concerns has caused significant distress and necessitated this extended leave of absence.

IX CAUSES OF ACTION

FIRST CAUSE OF ACTION
Failure to Pay Wages Plus Interest Cal. Labor Code § 203
(Against All DEFENDANTS and Does 1-50)

1. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

2. "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or *ascertained by* the standard of time, task, piece, commission basis, or other methods of calculation. Cal. Labor Code § 200.

3. "Compensation may be calculated on a variety of bases". Cal. Labor Code, § 200(a)

(compensation may be "fixed or ascertained by the standard of time, task, piece, commission basis, or other methods of calculation"); Wage Order No. 9, § 4(B) [compensation may be "measured by time, piece, commission, or *otherwise*"].) *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal. 5th 762, 781. *See also* Civ. Code § 1611 ("When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.")

4. The employment contract entitles PLAINTIFF and other Class Members to the reasonable value of their services. Cal. Labor Code § 200, Civ. Code § 1611 and *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal. 5th 762, 781. "Because the laws authorizing the regulation of wages, hours, and working conditions are remedial in nature, courts construe these provisions liberally, with an eye to promoting the worker protections they were intended to provide." *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal. 4th 217, 227.

5. At all times herein set forth, Cal. Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and 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 26th day of the month during which the labor was performed.

6. At all times herein set forth, Cal. Labor Code § 204 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 10th of the following month.

7. At all times herein set forth, Cal. Labor Code § 204 provides 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.

8. At all times herein set forth, Cal. Labor Code § 210 provides that in addition to and entirely independent from any other penalty provided in the Cal. Labor Code, every person who fails to pay the wages of the employee as provided in various provisions, including §§ 204 and 1197.5, shall be subject to an initial penalty of $100.00 for each failure to pay each employee, and a penalty of $200.00

for each subsequent willful or intentional violation, plus 25 percent of the amount unlawfully held.

9. At all relevant times herein, DEFENDANTS were required to compensate PLAINTIFF for all overtime, calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess, of eight (8) hours per day and/or forty (40) 12 hours per week, and for the first eight (8). hours on the seventh consecutive workday, with double-time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab. .15 Code. 510, 1194, Wage Order 7-2001(3), codified at Cal. Code Regs. tit. 8 § 11050.

10. At all relevant times herein, DEFENDANTS willfully failed to pay all overtime wages owed to PLAINTIFF. During the Class Period, PLAINTIFF and Class Members were not paid overtime premiums for all of the hours they worked in 19 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty (40) hours in a week, because all hours were not recorded.

11. At all relevant times. herein, DEFENDANTS failed to compensate PLAINTIFF and Class Members for all overtime hours worked by failing to pay overtime at one and one-half (1 1/2) times or double the regular rate; requiring, permitting, or suffering PLAINTIFF and Class Members to work through meal and rest periods; and inaccurately recording time in which PLAINTIFF and Class Members worked.

12. At all relevant times herein, DEFENDANTS failed to pay PLAINTIFF and Class Members minimum wages for all bows worked by requiring, permitting, or suffering PLAINTIFF and Class Members to work off-the-clock through meal and rest breaks; requiring, permitting or suffering PLAINTIFF and, Class Members to work off-the-clock outside of scheduled shifts. including by using their personal cell phone on their days off. As a result of these actions, DEFENDANTS did not pay at least minimum wages for all hours worked by PLAINTIFF and Class Members.

13. Pursuant to Cal. Labor Code § 1194.2, an employee is entitled to recover liquidated damages amounting to the wages unlawfully unpaid and interest thereon under Cal. Labor Code § 1194.2.

14. Cal. Labor Code § 1194.2 provides: "In any action under Section […] 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in the amount equal to the wages unlawfully unpaid and interest thereon."

15. As set forth herein, DEFENDANTS caused violations of Cal. Labor Code § 204, 1194.2, and 210.

16. DEFENDANTS are employers as defined in Wages Order No. 4-2001.

17. PLAINTIFF and other Class Members are entitled to recover all remedies available for violations of Cal. Labor Code §§ 204, 1194.2, and 210 and Wages Order No. 4-2001. At all times herein set forth, the Wage Orders, including, without limitation, Wage Order 4-2001, were applicable to PLAINTIFF's and other Class Members' employment.

18. DEFENDANTS Jack and Laura are individually, jointly, and severally liable with ESRI to PLAINTIFF, pursuant to Cal. Labor Code § 558.1 because they knowingly caused Cal. Labor Code and Wage Order violations as alleged herein.

19. As set forth herein, PLAINTIFF and other Class Members performed work for which she was not properly or fully compensated. DEFENDANTS failed to pay or cause PLAINTIFF to be paid all wages earned while she was employed by DEFENDANTS ESRI, Jack, and Laura.

20. PLAINTIFF and other Class Members are entitled to recover all unpaid wages, interest, penalties, and expenses due.

21. PLAINTIFF and other Class Members are entitled to recover all remedies available for violations of Cal. Labor Code §§ 203 and 210.

22. In bringing this action, PLAINTIFF had to retain the services of Blalock Dye Law, LLP. Therefore, PLAINTIFF intends to seek an award of reasonable attorney fees and costs pursuant to Cal. Labor Code §§ 98.2, 218.5, 510, and 1194, and other applicable laws, which provide that the court may award reasonable attorney fees and costs.

SECOND CAUSE OF ACTION

Failure to Pay Overtime and Double Time Wage Cal. Labor Code §§ 510 and 1194

(Against All DEFENDANTS and Does 1-50)

23. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

24. Cal. Labor Code § 1194 and the applicable Wage Order provide that any person not paid the legal overtime compensation applicable to the employee is entitled to bring a cause of action to recover the unpaid balance and attorney fees.

25. Specifically, the applicable Wage Order provides that DEFENDANTS are and were required to pay PLAINTIFF and other Class Members employed by DEFENDANTS, and 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 for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

26. The applicable Wage Order further provides that DEFENDANTS are and were required to pay PLAINTIFF and other Class Members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

27. Cal. Labor Code § 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

28. During the relevant time period, PLAINTIFF and other Class Members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week, including uncompensated on-call time.

29. During the relevant time period, DEFENDANTS intentionally and willfully failed to pay overtime wages owed to PLAINTIFF and other Class Members. DEFENDANTS knew or should have known that PLAINTIFF and other Class Members were working overtime and double-time hours without being paid the appropriate compensation for those hours worked.

30. At all relevant times herein, DEFENDANTS willfully failed to pay all overtime wages owed to PLAINTIFF and Class Members. During the Class Period, PLAINTIFF and Class Members

were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty (40) hours in a week, because all hours were not recorded.

31. At all relevant times. herein, DEFENDANTS failed to compensate PLAINTIFF and Class Members for all overtime hours worked by: failing to pay overtime at one and one-half (1 ½) tithes or double the regular rate; requiring, permitting or suffering PLAINTIFF and Class Members to work through meal and rest periods; and inaccurately recording time in which PLAINTIFF and Class Members worked.

32. Jack and Laura are employers as defined in Wage Order No. 4-2001 and are a joint employer with ESRI.

33. Jack and Laura are individually, jointly, and severally liable with ESRI to PLAINTIFF and other Class Members, pursuant to Cal. Labor Code § 558.1, because they caused Cal. Labor Code and Wage Order violations as alleged herein.

34. DEFENDANTS' failure to pay PLAINTIFF and other Class Members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of Cal. Labor Code §§ 510 and 1198, and is therefore unlawful.

35. In bringing this action, PLAINTIFF had to retain the services of Blalock Dye Law, LLP. Therefore, PLAINTIFF and other Class Members intend to seek an award of reasonable attorney fees and costs pursuant to Cal. Labor Code §§ 98.2, 218.5, 510, and 1194, and other applicable laws, which provide that the court may award reasonable attorney fees and costs.

THIRD CAUSE OF ACTION

Failure To Provide One Day's Rest In Seven Cal. Labor Code §§ 551, 552, and 852
(Against All DEFENDANTS and Does 1-50)

36. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

37. Cal. Labor Code §§ 550-558.1 and the applicable Wage Order provide that an employer is prohibited from "any person —caus[ing] his employees to work more than six days in seven‖ (§ 552),

but do not apply —when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof" (§ 556). (*Mendoza v. Nordstrom, Inc.* (9th Cir. 2015) 778 F.3d 834; see Cal. Rules of Court, rule 8.548.)

38. The California Labor Code ensures a day of rest protection for employees. First, "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." (§ 551.) Second, "[n]o employer of labor shall cause his employees to work more than six days in seven." (§ 552.) Section 556 states that Sections 551 and 552 "shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof." These statutes have caused confusion about at least three points: (1) whether "seven consecutive days" refers to the employer's designated workweek or a rolling period of seven days, (2) when the exception applies, and (3) what it means for an employer to "cause" employees to work more than six days in seven.

39. Moreover, California Labor Code Section 554 "provides employers and employees some latitude" by ensuring that "over the course of every calendar month an employee must receive 'days of rest equivalent to one day's rest in seven.'"

40. Thus, an explicit order to an employee (or more subtle "encouragement") to work on the seventh day of a workweek violates Labor Code Sections 551 and 552, but passively allowing an employee to work on the seventh day would not: "An employer cannot affirmatively seek to motivate an employee's forsaking rest, but neither need it act to prevent such forsaking."

41. At all times herein, Labor Code § 551 has provided that "[e]very person employed in any occupation of labor is entitled to one, day's rest therefrom in seven." Cal. Lab. Code 55l.

42. At all times herein, Labor Code § 552 has provided that "[n] employer of labor shall cause his employees to work more than six days in seven." Cal. Lab. Code § 552.

43. At all times, herein, Labor Code § 852 has provided that "[t]he employer shall apportion the periods of rest to be taken by an employee so that the employee will, have one complete, day of rest during each week." Cal. Lab. Code § 852.

44. DEFENDANTS regularly required PLAINTIFF another other Class Members to work

seven consecutive days or work in such a manner that she was denied a day of rest.

45. At all times herein, DEFENDANTS failed to provide to PLAINTIFF and Class Members the legally mandated rest days as required by California law. Further, "an employer's obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right." *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074, 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFF and Class Members.

46. DEFENDANTS' conduct violates Labor Code §§ 551 552 and 852.

47. PLAINTIFF and Class Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses, and costs of suit, as well as relief pursuant to Labor Code § 853.

FOURTH CAUSE OF ACTION

Failure to Indemnify Employee Expenses Incurred in Discharge of Duties
Cal. Labor Code § 2802
(Against All DEFENDANTS and Does 1-50)

48. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

49. Pursuant to Cal. Labor Code § 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties in direct consequence of his or her obedience to the directions of the employer.

50. DEFENDANTS are PLAINTIFF's employers, and they are required to comply with Cal. Labor Code § 2802.

51. At all times herein set forth, the Wage Orders, including, without limitation, Wage Order 4-2001, were, upon information and belief, applicable to DEFENDANTS' employment of PLAINTIFF and other Class Members.

52. PLAINTIFF and other Class Members incurred necessary and reasonable business-related expenses and costs that were not reimbursed by the DEFENDANTS. This includes, but is not limited to, rental of employees' cell phone, home business equipment, home office supplies, home internet, home office space, and travel expenses, including but not limited to gas, fair rental of the

employee's car, and meals.

53. DEFENDANTS knew or should have known PLAINTIFF, and other Class Members incurred these business expenses when they were incurred and that they were reasonable and necessary for PLAINTIFF and the Class Members to perform their job duties for DEFENDANTS. DEFENDANTS are strictly obligated to indemnify PLAINTIFF and other Class Members for these incurred business expenses.

54. PLAINTIFF and other Class Members are also entitled to simple annual interest on all unpaid business expenses of 10% from the pay period in which each expense was incurred until judgment is entered in this action. Cal. Labor Code § 2802(b); Civil Code § 3289.

55. DEFENDANTS have knowingly and willfully refused to indemnify PLAINTIFF and other Class Members. As a proximate cause of the violations, DEFENDANTS have damaged PLAINTIFF in amounts to be determined according to proof at trial, but in an amount in excess of the jurisdictional requirements of this Court.

56. In bringing this action, PLAINTIFF had to retain the services of Blalock Dye Law, LLP. Therefore, PLAINTIFF intends to seek reasonable attorney fees and costs pursuant to Cal. Labor Code §§ 218.5, 1194, and 2802, which provide that the Court may award PLAINTIFF's attorney fees and costs.

FIFTH CAUSE OF ACTION

Meal Break Violations - Violation of California Labor Code §§ 512, 226.7
(Against ALL DEFENDANTS and Does 1-50)

57. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

58. DEFENDANTS employed PLAINTIFF and classified her as a non-exempt employee. DEFENDANTS failed to issue any written policies to PLAINTIFF informing her of her statutory right to take an uninterrupted and duty-free 30-minute meal period, as described below.

59. PLAINTIFF and other Class Members are entitled to recover unpaid earnings while working during meal periods that were denied and/or interrupted.

60. At all times herein set forth, Wage Order 4 was applicable to DEFENDANTS'

employment of PLAINTIFF, and it provides as follows:

> **Meal Periods**
>
> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
>
> (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

61. An employer shall not require an employee to work during a meal period. Cal. Labor Code § 226.7 (a). Failure to provide a meal period in accordance with state law requires the employer to pay "the employee one additional hour of pay at the employee's regular rate of compensation for each workday the meal […] period is not provided." *Id.* at subd. (b). In order to comply with its meal period obligation, an employer must relieve the employee of all duty, relinquish control over their activities and permit them a reasonable opportunity to take an uninterrupted 30-minute break.

62. Labor Code section 512 and the Applicable Wage Order require employers to provide employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes . . . ."]; Cal. Code of Regs., tit. 8, § 11050 ["No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . . ."].) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes . . . ."]

63. "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes[.]" 8 C.C.R. § 11050, § 11 (A). An employer that causes an initial violation of Wage Orders, including without limitation, 4 and 5, is subject to a civil penalty of "$50 for each underpaid employee for each pay period the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Cal. Labor Code § 558 (a)(1).

64. Further, "an employer shall keep accurate information with respect to each employee including […] [t]ime records showing when the employee begins and ends each work period. Meal periods […] shall also be recorded." (Cal. Code Regs., tit. 8, § 11050 (7)(A)(3).) "Where the employer has failed to keep records required by statute, […] imprecise evidence by the employee can provide a sufficient basis for damages." *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 961 (2005).

65. DEFENDANTS maintained inaccurate time records for the hours PLAINTIFF and other Class Members worked. Cal. Labor Code § 226.3.

66. PLAINTIFF and other Class Members allege that DEFENDANTS are liable for unpaid premium wages for failure to provide them with notice of their right to, or an opportunity to take, an uninterrupted 30-minute duty-free meal periods under Cal. Labor Code § 226.7 (a).

67. PLAINTIFF and other Class Members allege that DEFENDANTS failed to authorize and notify them of their entitlement to a 30-minute uninterrupted duty-free meal periods for PLAINTIFF. Therefore, DEFENDANTS are liable for Cal. Labor Code § 558 penalties for violating § 11 (A) of Wage Orders, including without limitation, 4 and 9.

68. PLAINTIFF is entitled to recover all remedies available for violations of Cal. Labor Code § 226.7 pursuant to Cal. Labor Code § 210. *Hall v. W. Ref. Retail, LLC*, No. 519CV00855VAPSKX, 2019 WL 7940668, at *4 (C.D. Cal. Sept. 19, 2019) (quoting *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1104 and 1114(2007) (an additional hour is a premium wage, not a penalty).

69. DEFENDANTS are employers as defined in Wage Order No. 4-and are joint employers with ESRI.

70. At all times herein set forth, the Wage Orders, including without limitation, Wage Orders 4-2001 was upon information and belief, applicable to PLAINTIFF's employment.

71. DEFENDANTS ESRI, Jack and Laura are individually and jointly and severally liable to PLAINTIFF and other Class Members, pursuant to Cal. Labor Code § 558 because they caused Cal. Labor Code and Wage Order violations as alleged herein.

72. Pursuant to Cal. Labor Code § 210, in addition to other relief, DEFENDANTS are liable to PLAINTIFF and other Class Members for a penalty of $100 for the first violation of Cal. Labor Code § 204, and $200 for each subsequent violation, plus 25% of the amount of wages unlawfully withheld.

73. PLAINTIFF and other Class Members are entitled to recover all remedies available for violations of Cal. Labor Code § 226.7, including waiting time penalties pursuant to Cal. Labor Code §§ 203 and 210. *Hall v. W. Ref. Retail, LLC*, No. 519CV00855VAPSKX, 2019 WL 7940668, at *4 (C.D. Cal. Sept. 19, 2019) (quoting *Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1104 and 1114 (additional hour is a premium wage, not a penalty).

74. PLAINTIFF alleges DEFENDANTS failed to provide PLAINTIFF and other Class Members with meal breaks, or even a reasonable opportunity to take them.

75. PLAINTIFF and other Class Members are also entitled to annual simple interest on all unpaid wages of 10%. *See* Cal. Lab. Code §§ 226.7, 1194, Civ. Code § 3289.

76. In bringing this action, PLAINTIFF had to retain the services of Blalock Dye Law, LLP. Therefore, PLAINTIFF intends to seek an award of reasonable attorney fees and costs pursuant to Cal. Labor Code §§ 218.5 and 1194, and other applicable laws, which provide that the Court may award reasonable attorney fees and costs.

<u>SIXTH CAUSE OF ACTION</u>

Unpaid Rest Period Premiums -Violation of California Labor Code § 226.7
(Against All DEFENDANTS and Does 1-50)

77. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

78. This is an action at law to recover unpaid earnings while working during rest periods which were denied and/or interrupted.

79. DEFENDANTS employed PLAINTIFF and classified her as a non-exempt employee.

DEFENDANTS failed to issue any written policies to PLAINTIFF informing her of her statutory right to take an uninterrupted and duty-free 10-minute rest period, as described below.

80. At all times herein set forth, Wage Order 4 was applicable to DEFENDANTS' employment of PLAINTIFF, and the employment of other Class Members, provide as follows: An employer is required to provide its employees with a *paid* uninterrupted and duty-free 10-minute rest break for every four hours worked. Cal. Code Regs., tit. 8, Section 11050 (12)(A) (emphasis added). If an employer fails to provide an employee with a rest period mandated by law, the employer must pay to that employee an hour of pay at that employee's regular rate of pay for each day a rest period was not provided. Cal. Labor Code § 226.7.

81. DEFENDANTS are liable to PLAINTIFF and other Class Members for unpaid premium wages for failure to provide them with notice of their right to, or an opportunity to take, an uninterrupted 10-minute duty-free rest breaks under Cal. Labor Code §§ 226.2 and 226.7.

82. DEFENDANTS failed to provide PLAINTIFF and other Class Members with a paid uninterrupted and duty-free 10-minute rest breaks as required by the Cal. Labor Code.

83. At all times herein set forth, was applicable to DEFENDANTS' employment of PLAINTIFF.

84. DEFENDANTS are jointly and severally liable to PLAINTIFF and other Class Members pursuant to Cal. Labor Code § 558.1 because they caused Labor Code and Wage Order violations as alleged herein.

85. Because PLAINTIFF and other Class Members did not receive a compliant rest break for any day that she worked 4 hours or a major fraction thereof, as a matter of law, and she and other Class Members are entitled to a rest break premium equal to one hour of wages at the regular rate of pay for each day they did not receive a rest break.

86. PLAINTIFF and other Class Members are entitled to recover all remedies available for violations of Cal. Labor Code § 226.7 pursuant to Cal. Labor Code §§ 203 and 210. *Hall v. W. Ref. Retail, LLC*, No. 519CV00855VAPSKX, 2019 WL 7940668, at *4 (C.D. Cal. Sept. 19, 2019) (quoting *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1104 and 1114(2007) (an additional hour is a premium wage,

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not a penalty).

87. Pursuant to Cal. Labor Code § 210, in addition to other relief, DEFENDANTS are liable to PLAINTIFF and other Class Members for a penalty of $100 for the first violation of Cal. Labor Code § 204, and $200 for each subsequent violation, plus 25% of the amount of wages unlawfully withheld.

88. PLAINTIFF and other Class Members are also entitled to annual simple interest on all unpaid wages of 10%. *See* Cal. Lab. Code §§ 226.7, 1194, Civ. Code § 3289.

89. In bringing this action, PLAINTIFF had to retain the services of Blalock Dye Law, LLP. Therefore, PLAINTIFF intends to seek an award of reasonable attorney fees and costs pursuant to Cal. Labor Code §§ 218.5 and 1194, and other applicable laws, which provide that the Court may award reasonable attorney fees and costs.

SEVENTH CAUSE OF ACTION

Noncompliant Wage Statements- Violation of California Labor Code § 226(a)
(Against ESRI and Does 1-50)

90. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

91. At all material times set forth herein, Cal. Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her Social Security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible forms, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State

of California.

92. DEFENDANT ESRI intentionally and willfully failed to provide PLAINTIFF and other Class Members with complete and accurate wage statements. The deficiencies include but are not limited to: total hours worked by the employee, all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, the inclusive dates of the period for which the employee is paid, the name of the employee and his or her Social Security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

93. As a result of the ESRI's violation of Cal. Labor Code § 226(a), PLAINTIFF and other Class members suffered injury and damage to their statutorily protected rights.

94. More specifically, PLAINTIFF and the Class Members have been injured by ESRIs' intentional and willful violation of Cal. Labor Code § 226(a) because she was denied her legal right to receive, and her protected interest in receiving accurate and itemized wage statements pursuant to Cal. Labor Code § 226(a).

95. PLAINTIFF and the Class Members are entitled to recover from ESRI the greater of their actual damages caused by ESRI's failure to comply with Cal. Labor Code § 226(a), or an aggregate penalty not exceeding $4,000 per employee.

96. PLAINTIFF and the Class Members are also entitled to injunctive relief to ensure compliance with this section, pursuant to Cal. Labor Code § 226(h).

EIGHTH CAUSE OF ACTION
Deficient Pay Penalties - California Labor Code Section 210
(Against All Defendants and Does 1-50)

97. PLAINTIFF realleges and incorporates each and every foregoing paragraph of this Complaint as though fully set forth in this cause of action.

98. At all times herein set forth, Labor Code § 210 provides that in addition to an entirely independent from any other penalty provided in the Labor Code, every person who fails to pay the wages of the employee shall be subject to an initial penalty of $100.00 for each failure to pay each

employee, and a penalty of $200.00 for each willful or intentional violation, plus 25 percent of the amount unlawfully held.

99. As set forth herein, DEFENDANTS caused violations of Labor Code § 210.

100. At all times herein set forth, the Wage Orders, including without limitation, Wage Order 4, were, upon information and belief, applicable to DEFENDANTS' employment of PLAINITFF.

101. Defendants are jointly and severally liable pursuant to Labor Code § 558 because they caused Labor Code and Wage Order violations as alleged herein.

102. PLAINITIFF and other Class Members are entitled to recover all remedies available for violations of Labor Code §§ 201.3, 203, 204, and 226.7, as provided by Labor Code Section 210 and interpretive case law.

NINETH CAUSE OF ACTION

Failure to Pay Meal Period Premiums and Rest Break Premiums
(Against All DEFENDANTS and Does 1-50)

103. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

104. At all times herein set forth, Cal. Labor Code § 210 provides that in addition to and entirely independent from any other penalty provided in the Cal. Labor Code, every person who fails to pay the wages of the employee shall be subject to an initial penalty of $100.00 for each failure to pay each employee, and a penalty of $200.00 for each willful or intentional violation, plus 25 percent of the amount unlawfully held.

105. As set forth herein, DEFENDANTS caused violations of Cal. Labor Code § 210.

106. DEFENDANTS are employers as defined in Wage Order No. 4-2001 and are joint employers with ESRI.

107. At all times herein set forth, the Wage Orders, including without limitation, Wage Order 4, were, upon information and belief, applicable to DEFENDANTS' employment of PLAINTIFF and other Class Members.

108. DEFENDANTS ESRI, Jack and Laura are individually, jointly, and severally liable with ESRI to PLAINTIFF and other Class Members, pursuant to Cal. Labor Code § 558.1, because they

caused violations of Cal. Labor Code § 210 and Wage Order violations as alleged herein.

109. PLAINTIFF and other Class Members are entitled to recover all remedies available for violations of Cal. Labor Code §§ 203, 204, and 226.7, as provided by Cal. Labor Code § 210 and its interpretive case law.

110. In bringing this action, PLAINTIFF had to retain the services of Blalock Dye Law, LLP. Therefore, PLAINTIFF and other Class Members intend to seek an award of reasonable attorney fees and costs pursuant to Cal. Labor Code § 210 (c) and other applicable laws, which provide that the court may award reasonable attorney fees and costs.

TENTH CAUSE OF ACTION
(Failure to Maintain Payroll Records - Violation of California Labor Code §§ 226.3, 1174(d))
(Against DEFENDANT ESRI and Does 1-50)

111. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

112. Pursuant to Cal. Labor Code §1174(d), an employer shall keep 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years.

113. Pursuant to Cal. Labor Code § 226.3 any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer ….. fails to keep the records required in Section 226(a). The civil penalties provided for in Section 226.3 are in addition to any other penalty provided by law.

114. DEFENDANT ESRI has intentionally and willfully failed to keep accurate and complete payroll and timekeeping records showing the hours worked daily and the wages paid to PLAINTIFF and other Class Members.

115. As a result of DEFENDANT'S violation of Cal. Labor Code §§ 226.3 and 1174(d),

PLAINTIFF and other Class Members suffered injury and damage to their statutorily protected rights.

116. More specifically, PLAINTIFF and other Class Members have been injured by DEFENDANT'S intentional and willful violation of Cal. Labor Code §§ 226.3 and 1174(d) because they were denied both their legal right and protected interest in having available, accurate, and complete payroll and timekeeping records pursuant to Cal. Labor Code §§ 226.3 and 1174(d).

ELEVENTH CAUSE OF ACTION
Unfair Competition – Bus. & Prof. Code § 17200 et seq.
(Against DEFENDANT ESRI and Does 1-50)

117. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

118. DEFENDANT ESRI is PLAINTIFF's and other Class Members employer and is required to comply with California laws and to ensure that PLAINTIFF and other Class Members' employers comply with Bus. and Prof. Code § 17200.

119. Bus. and Prof. Code § 17200 provides:

> As used in this chapter, unfair competition shall mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited by Chapter 1 (commencing with § 17500) of Part 3 of Division 7 of the Business and Professions Code.

120. PLAINTIFF is informed and believes, and based thereon alleges, DEFENDANT engaged in unfair or illegal business acts and practices within the meaning of Bus. and Prof. Code § 17200.

121. DEFENDANT ESRI's conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to PLAINTIFF. Accordingly, PLAINTIFF and other Class Members seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure §1021.5.

122. ESRI's activities, as alleged herein, are violations of California law and constitute unlawful business acts and practices in violation of Bus. & Prof. Code § 17200, et seq.

123. A violation of Bus. & Prof. Code § 17200, et seq., may be predicated on any illegal, unfair, or fraudulent business act or practice.

124. In this instant case, ESRI's policies and practices of misclassifying employees to lower ESRI's employment expenses, failing to pay overtime and other contractually agreed compensation, failing to reimburse business expenses, and failing to timely pay wages, are all both unfair and unlawful.

125. As a result of the herein described violations of California law, ESRI unlawfully gained an unfair advantage over other businesses and retained money that rightfully belonged to their employees.

126. PLAINTIFF and other Class Members have been personally and directly injured by ESRI's unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or personal property.

127. For the avoidance of doubt, this Tenth Cause of Action does not seek to recover any statutory fees or penalties but merely seeks restitution of the illegal windfall ESRI gained by refusing to pay PLAINTIFF's and other Class Member's wages and injunctive relief to prevent ESRI from continuing to engage in unlawful conduct.

128. PLAINTIFF and other Class Members are entitled to relief, including full restitution and/or disgorgement of any funds and benefits that DEFENDANT may have obtained as a result of such unfair or illegal business acts and practices. Bus. and Prof. Code § 17203.

129. Pursuant to Bus. & Prof. Code § 17200, et seq., PLAINTIFF is entitled to restitution of the wages, compensation, and business expenses wrongfully withheld and retained by PLAINTIFF's during a period that commences four years prior to the filing of this Complaint; interest thereon, an award of attorney's fees pursuant to Code of Civil Procedure § 1021.5, and other applicable laws; and an award of costs.

<u>TWELFTH CAUSE OF ACTION</u>
Disability Discrimination (Gov. Code, § 12940, subd. (a))
(Against DEFENDANT ESRI and Does 1-50)

130. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

131. PLAINITFF'S disability was the motivating reason for ESRI discriminating against PLAINTIFF in terms, conditions, or privileges of employment, as alleged above, in violation of

Government Code § 12940, subdivision (a).

132. Further, ESRI's employment practices and/or policies had a disproportionate effect on disabled persons such as PLAINTIFF, in violation of Government Code § 12940, subdivision (a).

133. As a proximate result of the wrongful acts of ESRI, PLAINTIFF has been harmed in that he has suffered and will continue to suffer actual, consequential, and incidental financial losses, including without limitation loss of income, salary, and benefits, and the intangible loss of employment-related opportunities for growth in her field and damage to her professional reputation, all in an amount according to proof at the time of trial.

134. As a proximate result of the wrongful acts of ESRI, PLAINTIFF has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress. PLAINTIFF has experienced emotional, mental, and physical symptoms arising from the wrongful acts of ESRI and has required medical attention and treatment for said symptoms. PLAINTIFF is informed and believes and thereon alleges that she will continue to experience emotional and physical suffering for a period of time in the future he cannot presently ascertain. PLAINTIFF has suffered past, present, and future damages in an amount to be shown according to proof at the time of trial.

135. As a proximate result of the wrongful acts of ESRI, PLAINTIFF has been forced to hire Blalock Dye Law, LLP, to prosecute her claims herein and has incurred and is expected to continue to incur attorney's fees and costs in connection with this lawsuit. Accordingly, PLAINTIFF requests attorney's fees and costs under Government Code § 12965, subdivision (b).

136. The above-recited actions of ESRI were done with malice and oppression and in reckless disregard of PLAINTIFF's rights under the Fair Employment and Housing Act ("FEHA"), in that ESRI engaged in such despicable conduct in order to cause injury to PLAINTIFF and to subject her to cruel and unjust hardship in conscious disregard of her rights. Moreover, ESRI and each of their acts and omissions in continuing, confirming, and ratifying said conduct, were done with the knowledge that PLAINTIFF's emotional and physical distress would thereby increase, and with a wanton and reckless disregard of the consequences to PLAINTIFF. Thus, an award of punitive damages in an amount to be determined at trial is justified against ESRI.

137. As a result of ESRI's wrongful acts, PLAINTIFF has been forced to hire Blalock Dye Law, LLP, to prosecute her claims herein and has incurred and is expected to continue to incur attorney's fees and costs in connection with this lawsuit. Accordingly, PLAINTIFF requests attorney's fees and costs under Government Code § 12965, subdivision (b).

<u>THIRTHEETH CAUSE OF ACTION</u>

Failure to Provide Reasonable Accommodation (Gov. Code Section 12940, subd. (m))
(Against DEFENDANT ESRI and Does 1-50)

138. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

139. PLAINTIFF has a disability that limits her major life activity.

140. ESRI knew of PLAINTIFF's disability that limited her major life activity.

141. In September 2023, PLAINTIFF filed her first request for an accommodation with ESRI.

142. ESRI failed to respond or provide reasonable accommodation for PLAINTIFF's disability. By failing to respond to PLAINTIFF's request for an accommodation, ERSI denied the request without ever attempting to engage in the interactive process to determine if it could grant the accommodation. ESRI's conduct was unreasonable.

143. As a proximate result of the wrongful acts of ESRI, PLAINTIFF has been harmed in that she has suffered and will continue to suffer actual, consequential, and incidental financial losses, including without limitation loss of income, salary, and benefits, and the intangible loss of employment-related opportunities for growth in her field and damage to her professional reputation, all in an amount according to proof at the time of trial.

144. As a proximate result of the wrongful acts of ESRI, PLAINTIFF has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress. PLAINTIFF has experienced emotional, mental, and physical symptoms arising from the wrongful acts of ESRI and has required medical attention and treatment for said symptoms. PLAINTIFF is informed and believes and thereon alleges that she will continue to experience emotional and physical suffering for a period of time in the future he cannot presently ascertain. PLAINTIFF has suffered past, present,

and future damages in an amount to be shown according to proof at the time of trial.

145. The above-recited actions of ESRI were done with malice and oppression and in reckless disregard of PLAINTIFF's rights under FEHA, in that ESRI engaged in such despicable conduct in order to cause injury to PLAINTIFF and to subject her to cruel and unjust hardship in conscious disregard of her rights. Moreover, ESRI and each of their acts and omissions in continuing, confirming, and ratifying said conduct, were done with the knowledge that PLAINTIFF's emotional and physical distress would thereby increase, and with a wanton and reckless disregard of the consequences to PLAINTIFF. Thus, an award of punitive damages in an amount to be determined at trial is justified against ESRI.

146. As a result of ESRI's wrongful acts, PLAINTIFF has been forced to hire Blalock Dye Law, LLP, to prosecute her claims herein and has incurred and is expected to continue to incur attorney's fees and costs in connection with this lawsuit. Accordingly, PLAINTIFF requests attorney's fees and costs under Government Code § 12965, subdivision (b).

FOURTEENTH CAUSE OF ACTION

Failure to Engage in an Interactive Process (Gov. Code Section 12940, subd. (n))
(Against ESRI Does 1-50)

147. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

148. PLAINTIFF had a disability that limited her major life activity.

149. DEFENDANT ESRI knew of PLAINTIFF's disability that limited her major life activity.

150. PLAINTIFF believed and believes she could have continued performing all essential duties and function of her job had she provided a response to her request for a reasonable accommodation from ESRI.

151. DEFENDANT ESRI failed to engage in a timely, good faith, interactive process with PLAINTIFF to determine effective reasonable accommodations.

152. As a proximate result of the wrongful acts of ESRI, PLAINTIFF has been harmed in that she has suffered and will continue to suffer actual, consequential, and incidental financial losses,

including without limitation loss of income, salary, and benefits, and the intangible loss of employment-related opportunities for growth in her field and damage to her professional reputation, all in an amount according to proof at the time of trial.

153. As a proximate result of the wrongful acts of ESRI, PLAINTIFF has suffered and continues to suffer severe emotional distress. Despite repeated requests for a disability accommodation made through ESRI's HR services between September and December 2023, PLAINTIFF received no response. Furthermore, in December 2023, after ESRI notified all employees of a change in HR service providers, it was discovered that PLAINTIFF's accommodation request was missing from her personnel file. Despite this discovery, E still failed to respond to PLAINTIFF's request from January to March 2024. In early March 2024, PLAINTIFF was specifically directed via a department-wide email to return to work within five days. The ongoing stress caused by ESRI's failure to address her accommodation request led to PLAINTIFF's physician placing her on a 60-day disability leave of absence, effective March 25, 2024. ESRI's disregard for PLAINTIFF's accommodation needs and subsequent directive to return to work without addressing her concerns have exacerbated her distress and necessitated this extended leave of absence.

154. The above-recited actions of ESRI were done with malice and oppression and in reckless disregard of PLAINTIFF’s rights under FEHA, in that ESRI engaged in such despicable conduct in order to cause injury to PLAINTIFF and to subject her to cruel and unjust hardship in conscious disregard of her rights. Moreover, ESRI and each of their acts and omissions in continuing, confirming, and ratifying said conduct, were done with the knowledge that PLAINTIFF’s emotional and physical distress would thereby increase, and with a wanton and reckless disregard of the consequences to PLAINTIFF. Thus, an award of punitive damages in an amount to be determined at trial is justified against ESRI.

155. As a result of ESRI's wrongful acts, PLAINTIFF has been forced to hire Blalock Dye Law, LLP, to prosecute her claims herein and has incurred and is expected to continue to incur attorney’s fees and costs in connection with this lawsuit. Accordingly, PLAINTIFF requests attorney’s fees and costs under Government Code § 12965, subdivision (b)

FIFTEENTH CAUSE OF ACTION

Failure to Prevent Discrimination (Gov. Code, § 12940, subd. (k))
(Against DEFENDANT ESRI Does 1-50)

156. PLAINTIFF realleges and incorporates by referencing each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

157. Before the discriminatory treatment, as alleged above, ESRI failed to take all reasonable steps to prevent such discrimination from occurring. Thus, ESRI conduct violated Government Code § 12940, subdivision (k).

158. As a proximate result of the wrongful acts of ESRI, PLAINTIFF has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress. PLAINTIFF has experienced emotional, mental, and physical symptoms arising from the wrongful acts of ESRI and has required medical attention and treatment for said symptoms. PLAINTIFF is informed and believes and thereon alleges that he will continue to experience emotional and physical suffering for a period of time in the future he cannot presently ascertain. PLAINTIFF has suffered past, present, and future damages in an amount to be shown according to proof at the time of trial.

159. The above-recited actions of ESRI were done with malice and oppression and in reckless disregard of PLAINTIFF's rights under FEHA, in that ESRI engaged in such despicable conduct in order to cause injury to PLAINTIFF and to subject her to cruel and unjust hardship in conscious disregard of her rights. Moreover, ESRI and each of its acts and omissions in continuing, confirming, and ratifying said conduct, were done with the knowledge that PLAINTIFF's emotional and physical distress would thereby increase, and with a wanton and reckless disregard of the consequences to PLAINTIFF. Thus, an award of punitive damages in an amount to be determined at trial is justified against ESRI.

160. As a result of ESRI's wrongful acts, PLAINTIFF has been forced to hire Blalock Dye Law, LLP, to prosecute her claims herein and has incurred and is expected to continue to incur attorney's fees and costs in connection with this lawsuit. Accordingly, PLAINTIFF requests attorney's fees and costs under Government Code §12965, subdivision (b).

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<u>SIXTEENTH CAUSE OF ACTION</u>
(PAGA -Labor Code §§ 2698, et seq.)
(Against DEFENDANT ESRI Does 1-50)

161. PLAINTIFF realleges and incorporates by referencing each and every previous paragraph of this Complaint as though fully set forth herein.

162. PAGA expressly establishes that any provision of the Cal. Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employers for a violation of the Cal. Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of herself or herself, and other current or former employees.

163. Whenever the LWDA or any of its departments, divisions, commissions, boards, agencies, or employers has the discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

164. PLAINTIFF and other former and current employees are "aggrieved employees" as defined by Cal. Labor Code § 2699 in that they are all current or former employees of ESRI and one or more of the alleged violations was committed against them.

a. Failure to timely pay all wages;

b. Failure to pay all overtime wages and or double-time wages earned;

c. Failure to provide accurate wage statements;

d. Failure to provide one day's rest in seven;

e. Failure to indemnify employees for incurred business expenses;

f. Failure to provide uninterrupted duty-free meal and rest periods;

g. Failure to provide meal period and rest break premiums;

h. Failure to indemnify employees for incurred business expenses;

i. Failure to maintain records of all hours worked and paid, including meal periods taken; and

j. Retaliating against employees in violation of public policy for engaging in the protected activity of complaining about unfair employment practices.

165. Pursuant to Cal. Labor Code § 2699, PLAINTIFF, individually and on behalf of all aggrieved employees, requests and is entitled to recover from DEFENDANTS penalties arising from the DEFENDANT'S PAGA violations according to proof, attorneys' fees and costs pursuant to Labor Code § 218.5, as well as all statutory penalties against DEFENDANT ESRI, including but not limited to:

k. Penalties under Cal. Labor Code § 2699 in the amount of a hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation;

l. Penalties under Cal. Code of Regulations Title 8 § 11010, et seq., in the amount of fifty dollars ($50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars ($100) for each aggrieved employee per pay period for each subsequent violation;

m. Penalties under Cal. Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the Cal. Labor Code in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation;

n. Penalties under Cal. Labor Code § 210 amounting to 25% of the withheld wages;

o. Waiting time penalties pursuant to Cal. Labor Code § 203 thirty (30) days of PLAINTIFF's wages calculated by her daily wage rate; and

p. Any and all additional penalties and sums as provided by the Cal. Labor Code and/or other statutes.

166. Pursuant to Cal. Labor Code § 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities, and twenty-five percent (25%) to the aggrieved employees.

167. In bringing this action, PLAINTIFF had to retain the services of an attorney. Therefore, PLAINTIFF intends to seek an award of her reasonable attorney fees and costs pursuant to Cal. Labor Code §§ 210, 218.5, and 2699, and other applicable laws, which provide that the court may award

reasonable attorney’s fees and costs.

VIII. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment, as follows:

1. for compensatory damages according to proof at trial;

2. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the Labor Code and Wage Orders, and from engaging in the unlawful business practices complained of herein;

3. for special damages, according to proof;

4. for punitive or exemplary damages, according to proof;

5. for consequential damages for breach of contract, according to proof;

6. for civil and statutory penalties;

7. for, in the alternative, restitution pursuant to Bus. & Prof. Code §§ 17200 and 17203;

8. for reasonable and necessary attorneys’ and costs incurred through the trial of this case and through any appeal, as a result of PLAINTIFF’s prosecuting these claims against DEFENDANTS pursuant to the Labor Code;

9. for pre-judgment and post-judgment interest, as provided by law;

10. for all costs of suit; and

11. for any other such relief as the Court deems just and proper.

Respectfully submitted,

Dated:

HELLMICH LAW GROUP, PC

Christopher W. Hellmich, Esq.

BLALOCK DYE LAW, LLP
Alanna Blalock, Esq.
Danielle Dye, Esq.

Counsel for Plaintiff Laura Provonsha

JURY DEMAND

Laura Provonsha demands a trial by jury as to all claims so triable.

Dated: March 28, 2024

HELLMICH LAW GROUP, PC

By: ______________________________
Christopher Hellmich

BLALOCK DYE LAW, LLP
Alanna M. Blalock, Esq.
Danielle E, Dye, Esq.

Counsel for Plaintiff Laura Provonsha

EXHIBIT 1

November 14, 2023

VIA ONLINE SUBMISSION
Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

By Email and U.S. Certified Mail:	By Email and U.S. Certified Mail:
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. Jack Dangermond 380 New York Street Redlands, CA 92373	ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. Lance Lenhert 380 New York Street Redlands, CA 92373
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. Laura Dangermond 380 New York Street Redlands, CA 92373	California Registered Corporate Agent (1505) CSC – Lawyers Incorporating Services 2710 Gateway Oaks Drive Suite 150N Sacramento, CA 95833
ESRI GLOBAL, INC. 380 New York Street Redlands, CA 92373	

NOTICE OF LABOR CODE VIOLATIONS AND PAGA PENALTIES

Re: *Laura Provonsha v. Environmental Systems Research Institute, Inc., Jack Dangermond, Laura Dangermond, Lance Lenhert and Does 1-50*

Dear Mr. and Mrs. Dangermond:

Please be advised that my office represents Laura Provonsha ("Plaintiff") in pursuing a Labor Code Private Attorneys General Act ("PAGA") representative action pursuant to Labor Code §§ 2699, *et* *seq.* against her employers, Environmental Systems Research Institute, Inc., ("ESRI"), ESRI Global, Inc. ("Global") (collectively "ESRI"), Jack Dangermond ("Jack"), Laura Dangermond ("Laura"), and Lance Lenhert ("Lance") (collectively the "Defendants"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations that we allege Defendants engaged in with respect to Plaintiff and all of the Defendants' aggrieved California employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former nonexempt employees who worked for Defendant in California at any time within the applicable statutory period (the "Non-exempt employees"). Plaintiff and the Defendants' Non-exempt employees suffered the Labor Code violations described below.

ESRI, at all times herein mentioned, was and is, upon information and belief, a California corporation qualified to do business in California, including the County of Riverside, whose principal place of business is located at 380 New York Street, Redlands, CA. Upon information and belief, ESRI employed Plaintiff since June 4, 2007.

Jack, Laura, and Lance are believed to be the owners of ESRI. Jack is the Chief Executive Officer of ESRI, Laura is the Secretary of ESRI, and Lance is the Chief Financial Officer of ESRI. At all times, these Defendants controlled ESRI within the meaning of all applicable California laws and statutes, including controlling the operations, policies, and practices in a joint fashion. Defendants also controlled the terms of Plaintiff's employment, including, compensation, scheduling, and benefits.

At all relevant times, Defendants controlled and directed the terms of employment, compensation, employment practices and policies of all other aggrieved current and former employees.

Factual Background Regarding Plaintiff's Employment with Defendants

Plaintiff began her employment with the Defendants 16 years ago, joining the Redlands branch as a non-exempt employee. In the course of her longstanding affiliation with Defendants, Plaintiff is a non-exempt employee and receives a nominal $75 allowance for cell phone usage. It is imperative to emphasize that during the entirety of Plaintiff's tenure which still exists today, Defendants upheld a practice wherein Plaintiff and all other non-exempt employees adhered to a standardized method of timekeeping that did not entail maintaining accurate time records of their worked hours. As an illustrative example, Plaintiff, in line with this established practice, routinely deferred the recording of her work hours, including meal periods, until the conclusion of each payroll cycle, subsequently submitting her timesheets. This widely adopted practice within the organization compromised the precise recording of all work hours worked for all employees.

Further, Plaintiff and other non-exempt employees frequently found themselves working for precisely 6.00 hours without taking a lawful meal period, thus violating California labor laws. Despite Plaintiff's commitment to working through lunch, the absence of contemporaneous timesheets hindered the precise measurement of her time spent working.

Furthermore, at no point during Plaintiff's tenure, nor that of any other non-exempt employee, did they sign Meal Period Waiver Forms. In cases where the workday does not exceed six hours, California labor laws offer a degree of flexibility, allowing employees to voluntarily waive their right to a meal break, provided that mutual consent is established between the employee and employer. Plaintiff and other non-exempt employees did not sign Meal Break Waiver Forms, because Defendants did not provide a Meal Break Waiver for Plaintiff and other non-exempt employees to sign.

Additionally, when Plaintiff and other non-exempt employees inadvertently missed a mandated meal period due to the unlawful timekeeping practices, Defendants failed to provide the required meal period premium as mandated by California labor laws. This omission not only led to the violation of wage and hour regulations but also exacerbated the inaccuracy of wage statements for all non-exempt employees. The combined effect of inaccurate timekeeping and the absence of proper meal period premium payments resulted in wage statements that failed to reflect the true compensation earned by the Plaintiff and all other non-exempt employees.

In 2020, when the COVID-19 pandemic precipitated a seismic shift in traditional workplace dynamics, all Defendants' employees were abruptly directed to transition to remote work, a practice that remains in force to the present day. Regrettably, notwithstanding this transformation, employees received no reimbursement for the substantial business-related expenses they incurred, nor were they compensated for the elevated costs associated with utilizing their personal equipment for work-related purposes. Moreover, the flawed timekeeping procedure, which had long persisted, remained unchanged. Consequently, employees were denied meal period penalty pay for instances where they worked for extended hours, often surpassing 6 hours without a mandated meal break, and, in some instances, working up to 12 hours without the required second meal period. Furthermore, Plaintiff and other Non-exempt employees were made to work seven consecutive days without a day off, in violation of California labor laws.

Additionally, during the COVID-19 pandemic and the transition to remote work, a mandated requirement, California COVID-19 Supplemental Pay, emerged. Despite the legal requirement for employers to include such payments on wage statements or in another written form, Defendants failed to comply with this mandate. Consequently, Plaintiff and other non-exempt employees were deprived of the transparency and documentation necessary to accurately assess their Supplemental Pay in accordance with the law.

Throughout Plaintiff's employment, ESRI and the individual Defendants required Plaintiff and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage, Overtime & Double time Violations, and Violations of 7th Day of Rest

ESRI failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia,* Labor Code §§ 1194, 510, IWC Wage Order 4, and any other applicable wage orders. This illegal action is due, in part, to ESRI's policies of (1) failing to properly retain accurate Time Records, in violation of California law (Labor Code § 226.3), and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, in control of the employer. Additionally, ESRI would often require Plaintiff to work extended hours (beyond scheduled hours) without compensation. Further, ESRI would regularly contact Plaintiff outside of the normal work hours (i.e. "after hours" or during lunch) without compensation.

Defendants failed to compensate Plaintiff and other non-exempt California employees for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC Wage Order No. 1-2001, § 3; requiring, permitting or suffering Plaintiff and non-exempt employees to work off the clock while at their residence; requiring, permitting or suffering Plaintiff and non-exempt employees to work through meal and rest breaks but not compensating them for this time and failing to include this time in their hours worked; illegally and inaccurately recording time in which Plaintiff and non-exempt employees worked; failing to properly maintain Plaintiff and non-exempt employees' records; and failing to provide accurate itemized wage statements to Plaintiff and non-exempt employees for each pay period.

Furthermore, ESRI failed to provide "a day of rest guaranteed for each workweek" pursuant to California Labor Code §§ 551 and 552. California Labor Code § 551states *[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven*." Labor Code § 552 states: *"no employer may cause his employees to work more than six days in seven."*

Defendants allowed, suffered, or permitted Plaintiff and other Non-exempt employees to work a seventh day of work during their workweek. Defendants further did not apprise Plaintiff or other Non-exempt employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right while not encouraging Plaintiff and other Non-exempt employees to forgo rest or conceal the entitlement to rest.

Failure to Maintain Required Records

Defendant's unlawful payroll policies and practices deprived Plaintiff and non-exempt employees of being paid all wages earned and due, Defendants knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 226.3, 1174, and IWC Wage Order No. 12001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Failure to Provide Compliant Meal Periods

ESRI failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 5l2, and IWC Wage order 4, and/or any other applicable wage orders. For example, ESRI does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely or be provided a short or r-untimely Meal Period. Plaintiff was frequently interrupted during her Meal Periods by supervisors to discuss work related matters.

Defendants pressured its employees to either skip, or cut short Meal Period as employees were expected to respond to supervisors at all times. Defendants have never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues.

Defendants required their California employees to constantly' monitor their cell phones and unlawfully remain "on- call" at all times, specifically during Meal and Rest Periods. On occasion, Defendants would interrupt, or cut short its employees' Meal or Rest Periods and require them to return to work. ESRI was frequently understaffed, which would result in Plaintiff being required to respond to supervisors and work-related matters during her Meal Periods.

Defendants unlawfully retained control over its employees during Meal and Rest Periods. For example, Defendants required its employees to "remain at their residences" and to remain "On Call" (*i.e.* monitor their phones), including during Meal Periods.

Failure to Provide Compliant Rest Breaks

ESRI failed to provide compliant Rest Breaks or requisite Rest Break penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512. and IWC Wage Order 4, and/or any other applicable wage orders.

Defendants made no attempt to ensure that their employees are timely, wholly or lawfully provided compliant Rest Breaks. Employees would often either miss a Rest Break entirely, be provided a short, interrupted or untimely Rest Break, or be provided only one Rest Break, even when they were working in excess of 6.5 hours a day. Defendants pressured its employees to either skip or cut short a Rest Break as employees were expected to respond to supervisors at all times. Plaintiff often was required to work during Rest Breaks in order to complete her daily duties before she ended her shift for the day. ESRI has never provided a compliant Rest Break penalty payment to any employee as to the above referenced issues.

Defendants required their employees to constantly monitor their cell phones and be "on-call" at all times, specifically during Rest Breaks. On occasion. ESRI would interrupt, or cut short, its employees' Rest Breaks and require them to return to work. When Plaintiff was able to take a Rest Break her Rest Breaks were often interrupted by supervisors.

Finally, Defendants unlawfully retained control over its employees during Rest Breaks. For example, Defendants required their employees to "remain at their residences," and to remain "On Call" (i.e. monitor their phones), including during Rest Breaks.

Failure to Provide Complaint Expense Reimbursement Payments and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred as a direct consequence of the discharge of their duties or their obedience to the directions of the employer.

In 2020, the Defendants mandated that the Plaintiff and all non-exempt employees transitioned to a remote work arrangement. However, during this transition, the Defendants failed to offer any form of reimbursement for the various business-related expenses incurred by the Plaintiff and all other nonexempt employees. These expenses encompassed crucial aspects of remote work, including internet connectivity, cell phone usage, essential office equipment, office rental, and increased utility bills. The Plaintiff and all other non-exempt employees bore these financial burdens without any form of support or compensation from the Defendants.

Throughout the statutory period, Defendants wrongfully required Plaintiff and other non-exempt employees to pay expenses that they incurred in the direct discharge of their duties for Defendants without reimbursement. Defendants knew or reasonably should have known that Plaintiff and other non-exempt employees incurred these business-related expenses when they were incurred and that they were reasonable and necessary for the execution of their respective job duties. Therefore, Defendants are strictly obligated to indemnify Plaintiff and other non-exempt employees for these business expenses.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing nine pieces of information, including (l) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).

Defendants intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, inaccurate reporting of hours when Plaintiff is a non-exempt employee and does not track her actual hours, the failure to accurately list gross wages earned, and the failure to list the COVID-19 Supplemental Sick Pay.

As a result of Defendants violating Labor Code § 226, Plaintiff and similarly, Non-exempt employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Non-exempt employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding $4,000 per employee.

Covered Employees; COVID-19 Supplemental Paid Sick Leave (Labor Code § 248.6)

California Labor Code § 248.6 requires that employers provide COVID-19 Supplemental Paid Sick Leave to all employees, i.e., both exempt and non-exempt, who are unable to work or telework due to several delineated reasons. Additionally, Labor Code § 248.6 requires that employers provide separate written notice to their employees concurrently with the employee's wage statement accompanying each payment of wages. Under § 248.6, full-time employees were entitled to up to 80 hours of COVID-19 Supplemental Paid Sick Leave, while part-time employees were entitled to a prorated amount based on their average hours worked over a two-week period. Importantly, § 248.6 also requires that employers separately designate COVID-19 Supplemental Paid Sick Leave on an employee's wage statement, either in the wage statement itself or in a separate writing provided to the employee at the time wages are paid.

During Plaintiff's employment, Defendants never provided Plaintiff, or any other Non-exempt employees, with COVID-19 Supplemental Sick Leave. Additionally, Defendants did not provide written notice to its Plaintiff and its Non-exempt employees, as required by the Labor Code. Consequently, Defendants are subject to PAGA Penalties to Plaintiff and other Non-exempt employees.. Defendants' wage statements therefore are deficient and violate Labor Code § 226.3, in addition to Labor Code § 248.6.

California Paid Sick Leave (Labor Code § 246(i))

California's Healthy Workplaces, Healthy Families Act (the "HWHFA") requires employers to provide paid sick leave to employees. It also imposes payroll reporting requirements related to sick leave accrual. Pursuant to Labor Code § 246(i), employers must "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages." The consequences for violating section 246(i) are set forth in Labor Code §248.5(e), which is the heart of this article. This provision states:

"The Labor Commissioner or the Attorney General may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article and, upon prevailing, shall be entitled to collect legal or equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars ($4,000), as liquidated damages in the amount of fifty dollars ($50) to each employee or person whose rights under this article were violated for each day or portion thereof that the violation occurred or continued, plus, if the employer has unlawfully withheld paid sick days to an employee, the dollar amount of paid sick days withheld from the employee multiplied by three; or two hundred fifty dollars ($250), whichever amount is greater; and reinstatement in employment or injunctive relief; and further shall be awarded reasonable attorney's fees and costs, provided, however, that any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs."

Defendants failed to provide Plaintiff and other Non-exempt employees with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on both the Plaintiff's and other Non-exempt employees' itemized wage statement or a separate writing.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Non-exempt employees including but not limited to: Labor Code §§ 203, 204, 210, 216, 218.5, 225.5, 226, 226.3, 226.7, 226.8, 246, 248, 510, 512, 551, 552, 1198, 2753; and Industrial Welfare Commission Order No. 4-2001 ("Wage Order 4"). More specifically:

1. Labor Code §§ 203, 204, 510, 551, 552, 1194, 1197, and 1198 by failing to pay for all wages;
2. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records;
3. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
4. Labor Code § 226 by failing to provide accurate itemized wage statements;

5. Labor Code § 226.3 by failing to record all time worked, including time not worked during meal periods.
6. Labor Code §§ 226.7, 512 by failing to provide compliant meal periods and rest breaks;
7. Labor Code § 246(i) by failing to provide an employee with written notice that sets forth the amount of paid sick leave available; and
8. Labor Code § 248.6 by failing to provide COVID-19 Supplemental Paid Sick Leave to all employees.

Therefore, on behalf of the State of California and all Non-exempt employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to PAGA.

Notice to Defendants

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Conclusion

The facts and claims contained herein are based on the limited information available at the time of this writing. Therefore, if through discovery and/or expert review Ms. Provonsha becomes aware of additional penalties or violations of the Labor Code or IWC WO that she or other former or current employees of Defendants suffered, then Ms. Provonsha reserves the right to revise these facts and/or add any new claims by further amending this LWDA claim letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

BLALOCK DYE LAW, LLP

Alanna M. Blalock

Alanna M. Blalock
Attorney at Law

cc:
Laura Provonsha (via email)