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December 21, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

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

Davita Inc.
Attn: Human Resources / Legal Department
601 Hawaii Street
El Segundo, CA 90245

CSC Lawyers Incorporating Service
Agent for Service of Process for:
Total Renal Care, Inc.
Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
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Total Renal Care, Inc.
Attn: Human Resources / Legal Department
601 Hawaii Street
El Segundo, CA 90245

CSC Lawyers Incorporating Service
Agent for Service of Process for:
VillageHealth DM, LLC
Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
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McIntyre, Jerome Suarez, Samantha Wiltz,
and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

VillageHealth DM, LLC
Attn: JLD/SECGOVFIN and/or Human
Resources / Legal Department
601 Hawaii Street
El Segundo, CA 90245

CSC Lawyers Incorporating Service
Agent for Service of Process for:
Renal Treatment Centers – California, Inc.
Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
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2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Renal Treatment Centers – California, Inc.
Attn: Human Resources / Legal Department
601 Hawaii Street
El Segundo, CA 90245

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Davita, Inc.;
VillageHealth DM, LLC; Total Renal Care, Inc.; and Renal Treatment Centers –
California, Inc.
Date: December 21, 2023
Subject: *Amparito Dominguez, et al. v. Davita, Inc., et al.*

Introduction

This office represents Plaintiff, Amparito Dominguez (“PLAINTIFF DOMINGUEZ”); Plaintiff, Tamera Hartley (“PLAINTIFF HARTLEY”); Plaintiff, Mariel Jinn Garcia (“PLAINTIFF GARCIA”); Plaintiff, Marina Martinez (“PLAINTIFF MARTINEZ”); and Plaintiff, Jennifer Thornton (“PLAINTIFF THORNTON”) (hereinafter collectively referred to as “PLAINTIFFS”) in connection with PLAINTIFFS’ claims under the California Labor Code. PLAINTIFFS, and each of them, were, at all relevant times herein mentioned, employees of the following entities and individual managing agents of said entities: Davita, Inc. and/or VillageHealth DM, LLC and/or and Total Renal Care, Inc. and/or Renal Treatment Centers – California, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFFS, on behalf of PLAINTIFFS, and on behalf of all current and former non-exempt employees employed by any

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

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

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

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

PLAINTIFFS, on behalf of PLAINTIFFS, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.7, 245-248.6, 432.5, 432.6, 432.7, 510, 511, 512, 551-553, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, 6400-6404, 6406-6407, 6409.6, and all applicable Wage Orders.

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

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

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

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

Individual Liability Under Labor Code § 558.1

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

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

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at dialysis centers, treatment centers, medical offices, home / remote offices, healthcare facilities and/or other facilities and/or other location(s) in California, including but not limited to DEFENDANTS' dialysis centers, treatment centers, medical offices, home / remote offices, healthcare facilities and/or other facilities located in Southgate, Whittier, Lynwood, Norwalk and Downey, Merced, Atwater, Turlock, San Bernardino, Indio, Colton, Serrano, Highland Ranch, Citrus Valley, and Upland, California. DEFENDANTS own, operate, and / or otherwise manage a business that provides healthcare services, including but not limited to, kidney dialysis services for patients with chronic kidney failure and End Stage Renal Disease ("ESRD"). DEFENDANTS, through its various locations, serve the healthcare industry.¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFFS are former and/or current non-exempt employees of DEFENDANTS.

¹ See <https://www.davita.com/tools/find-dialysis-center?> and <https://www.villagehealth.com/>. Last visited on December 21, 2023.

PLAINTIFF DOMINGUEZ worked for DEFENDANTS as a care coordinator and/or similar title(s) and/or positions from on or around February 7, 2022 through in or around January 2023, at DEFENDANTS' facilities located in Southgate, Whittier, Lynwood, Norwalk and Downey that operate/operated under the name "VillageHealth" and/or "VillageHealth DM, LLC." PLAINTIFF DOMINGUEZ typically worked at least eight (8) hours per day, at least five (5) days per week.

PLAINTIFF HARTLEY worked for DEFENDANTS as a CCHT (Certified California Hemo Technician) and/or similar title(s) and/or position(s) from in or around January 2000 through in or around the end of 2023. PLAINTIFF HARTLEY typically worked at least ten (10) to twelve (12) hours per day. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' facilities located in Merced, Atwater and Turlock, California.

PLAINTIFF GARCIA worked for DEFENDANTS as a Patient Care Technician and/or Technician Preceptor and/or Master Cannulator and/or similar title(s) and/or position(s) from in or around 2013 through on or around April 18, 2023. PLAINTIFF typically worked approximately two (2) days per week at DEFENDANTS' San Bernardino facilities and approximately three (3) days per week at DEFENDANTS' Indio location(s).

PLAINTIFF MARTINEZ worked for DEFENDANTS as a Patient Care Technician and/or similar title(s) and/or position(s) from in or around 2021 through on or around December 5, 2023, at DEFENDANTS' facilities located in Colton, Serrano, Highland Ranch, Citrus Valley, and Upland, California. PLAINTIFF MARTINEZ typically worked at least ten (10) to fifteen (15) hours per day, at least five (5) days per week.

PLAINTIFF THORNTON worked for DEFENDANTS as a patient care technician and/or other similar title(s). PLAINTIFF THORNTON worked at DEFENDANTS' facilities located in Diamond Valley and Murrieta. PLAINTIFF THORNTON's job required her to assist in the provision of dialysis treatment for ESRD patients. PLAINTIFF's job duties included but were not limited to, opening/closing the facilities, receiving patients into the treatment area, taking and recording patient vital signs, setting up and/or monitoring dialysis machines and equipment and the water system for proper functioning, initiating dialysis treatment to patients, monitoring patients receiving dialysis, dismantling dialysis machines and equipment, cleaning and disinfectant duties, reviewing records, performing assigned clerical duties, among other duties. PLAINTIFF THORNTON typically worked shifts lasting at least twelve to fourteen hours, at least three (3) days per week.

DEFENDANTS paid PLAINTIFFS an hourly rate for time counted by DEFENDANTS as hours worked. Based on information and belief, DEFENDANTS also compensated NON-EXEMPT AGGRIEVED EMPLOYEES with non-discretionary bonuses/incentive pay, shift differential pay and/or other non-discretionary remuneration.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFFS and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFFS and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFFS and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular

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

Labor Code Violations

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

Based on information and belief, DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFFS and

other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

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

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

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

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

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

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

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

Time and Pay Records

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

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an

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

employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

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

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

Based on information and belief, DEFENDANTS fail to timely produce or make available a current or former employee’s personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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

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

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

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times, interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS’ premises due to the need to continue assigned job duties.

For example, PLAINTIFF DOMINGUEZ was at times required to take late meal periods and/or shortened and/or interrupted meal periods due to the need to complete assigned job duties. Based on information and belief, DEFENDANTS would edit PLAINTIFF DOMINGUEZ’s time records to make it appear as though PLAINTIFF had taken an uninterrupted, off-duty meal period of at least thirty minutes during most if not all shifts worked notwithstanding that DEFENDANTS had actual and/or constructive knowledge that PLAINTIFF DOMINGUEZ did not receive compliant meal periods.

Similarly, PLAINTIFF HARTLEY was frequently if not always required to take shortened, on duty and/or interrupted unpaid meal periods and/or work through her unpaid meal periods completely due to the need to complete assigned job duties. Based on information and belief, DEFENDANTS would unlawfully edit the clock in and out times for PLAINTIFF HARTLEY’s

and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods in order to display at least a thirty minute, timely, off-duty meal period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required PLAINTIFF HARTLEY and other NON-EXEMPT AGGRIEVED EMPLOYEES' to perform work-related tasks during their meal periods, resulting in meal period law violations as well as DEFENDANTS' failure to compensate PLAINTIFF HARTLEY and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of wages owed to PLAINTIFF HARTLEY and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Similarly, at times, PLAINTIFF GARCIA was required to clock out for meal periods but to continue working due to the need to complete assigned work tasks. Other times, PLAINTIFF GARCIA was required to take his meal period late – i.e. after the fifth hour of work – due to the need to complete assigned job duties.

Likewise, at times, PLAINTIFF THORNTON was regularly interrupted during her meal breaks to attend work meetings, e.g., DEFENDANTS' daily "homeroom" meetings to discuss the day-to-day operations of the facility. On information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also forced to take late, interrupted and/or shortened meal periods due to understaffing, pressure from supervisors to take noncompliant meal breaks and/or the nature and constraints of their job duties/need to keep up with distribution deadlines and/or complete other work tasks.

Moreover, based on information and belief, PLAINTIFF THORNTON and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to monitor work communication devices during purportedly off-duty meal periods. For example, at times, PLAINTIFF THORNTON's meal breaks were interrupted with work-related communications (e.g., on the public announcement system) she was required to respond to during purportedly off-duty meal breaks. Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain on DEFENDANTS's premises and/or were tethered to DEFENDANTS's communication devices during purported meal periods, and thus remained subjected to DEFENDANTS's control during meal periods.

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

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods. For example, as explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain on DEFENDANTS's premises and/or were tethered to DEFENDANTS's communication devices during purported meal periods, and thus remained subjected to DEFENDANTS's control during unpaid meal periods.

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

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

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when PLAINTIFF HARTLEY worked shifts lasting longer than ten (10) and/or twelve (12) hours, PLAINTIFF was not provided with any version of a second meal period.

Moreover, when PLAINTIFF MARTINEZ worked shifts lasting longer than ten (10) and/or twelve (12) hours, PLAINTIFF MARTINEZ was typically if not always denied a compliant second meal period.

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

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

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

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

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

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

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee

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

one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

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

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

PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently if not always unable to take compliant rest periods due to their need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises. For example, PLAINTIFFS were frequently if not always required to work through part or all of their owed rest periods each shift worked due to the need to complete assigned job duties.

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

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

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during rest periods. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were restricted to the worksite premises and/or were required to monitor and respond to work communication devices during any rest periods, in violation of California rest period law.

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

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

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

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

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

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

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

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

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

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

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

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

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

For example, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered, permitted and/or required to perform pre-shift and/or post-shift off-the-clock work.

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to be at their respective workstations at their scheduled shift start time or face discipline. As such, NON-EXEMPT AGGRIEVED EMPLOYEES typically arrived at work prior to their scheduled shift start times so that they could perform any required pre-shift work, including but not limited to, bestow personal items in employee lockers/storage area, retrieve and/or compile work tools/equipment, make any necessary adjustments to tools/equipment don work clothing/uniforms and/or protective equipment, and/or complete other work tasks so as to be ready to be at their respective work stations at the their scheduled shift start time as mandated by DEFENDANTS. This pre-shift off-the-clock work was neither recorded nor compensated resulting in the substantial underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times required to wait in line behind other NON-EXEMPT AGGRIEVED EMPLOYEES to enter DEFENDANTS' facilities and/or access DEFENDANTS' time-keeping system so they could then clock in for the start of their shifts which said waiting time spent under DEFENDANTS' control that was neither recorded nor compensated, resulting in DEFENDANTS' failure to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all time worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, PLAINTIFF THORNTON was consistently required to perform pre-shift and/or post-shift off-the-clock work. For example, prior to clocking in to work, PLAINTIFF THORNTON and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo pre-shift temperature checks and were also required to answer COVID-related screening questions prior to clocking into work. Upon satisfactory completion of the temperature check and screening questionnaire, NON-EXEMPT AGGRIEVED EMPLOYEES were required to walk to the locker area to don uniforms and/or safety/protective equipment and/or bestow any personal items in the lockers before clocking in for their shifts, often resulting in at least several minutes of pre-shift off-the-clock uncompensated worktime each day. At times, PLAINTIFF THORNTON was required to wait an additional several minutes for administrative personnel to arrive at the facility entrance to perform the temperature check and screening and/or PLAINTIFF THORNTON would have to spend time standing in line behind other employees and/or patients also entering the building before PLAINTIFF THORNTON underwent the mandated off-the-clock temperature check and screening process, adding at least an additional few minutes of unrecorded and uncompensated work time to PLAINTIFF THORNTON's workday.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to travel through the medical facility to access the time clock in their assigned departments, which took an average of at least a couple minutes each shift.

Also, based on information and belief, PLAINTIFF THORNTON and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to attend work meetings (e.g., daily “homeroom” meetings to discuss the day-to-day operations of the facility) after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in significant off-the-clock work and the underpayment of minimum and overtime wages owed to PLAINTIFF THORNTON and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, PLAINTIFF THORNTON and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform additional off-the-clock work for which they were not compensated. For example, on days PLAINTIFF THORNTON closed her work location, PLAINTIFF THORNTON was required to enable the alarm and lock the doors after clocking out for work. This resulted in at least several minutes of uncompensated work time. At the beginning of a shift, PLAINTIFF THORNTON and/or the other NON-EXEMPT AGGRIEVED EMPLOYEES in charge of opening the location were required to first unlock the doors, then disengage the alarm. This resulted in additional off-the-clock post-shift work that was not compensated.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to travel through the medical facility/DEFENDANTS’ facilities to access the time clock in their assigned departments, which took an average of at least a couple minutes each shift.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform post-shift off-the-clock work that was neither recorded nor compensated. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to put away their work tools/equipment, provide shift debriefings/make/receive work-related communications, assist patients, change out of their work clothing/uniforms and/or protective gear after clocking out for the end of their shifts, resulting in DEFENDANTS’ failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all time worked and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times required to clock out for the end of their shifts but were required to return back to work off-the-clock due to the need to assist patients and/or complete other assigned job duties.

For example, at least approximately once per month, PLAINTIFF GARCIA was required to clock out for the end of PLAINTIFF’s shift but to continue working, due to the need to complete assigned work tasks, including but not limited to, ordering supplies for DEFENDANTS and/or completing other off-the-clock work tasks outside of PLAINTIFF’s scheduled shift times, resulting in DEFENDANTS’ failure to compensate PLAINTIFF GARCIA for all work time and the underpayment of wages owed to PLAINTIFF GARCIA.

Similarly, PLAINTIFF DOMINGUEZ was at times required to assist patients and/or complete other work tasks prior to clocking in for the start of PLAINTIFF DOMINGUEZ’s shift and/or after

clocking out for the end of shift. This off-the-clock work was not recorded and not compensated, resulting in DEFENDANTS' failure to compensate PLAINTIFF DOMINGUEZ for all work time and the underpayment of wages owed to PLAINTIFF DOMINGUEZ.

Based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing uniforms and/or personal protective equipment and/or safety equipment (e.g., gloves and/or face masks and/or hair coverings and/or shoe coverings) during meal periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, DEFENDANTS did not compensate PLAINTIFF THORNTON and other NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment and/or uniforms during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

Based on information and belief, DEFENDANTS required PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to obtain Covid-related testing outside of their scheduled shift times without compensating them for the time spent completing DEFENDANTS' testing requirements. Based on information and belief, DEFENDANTS performed an automatic deduction for meal periods that were worked through, interrupted, cut short, and/or during which NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties and DEFENDANTS' control, resulting in DEFENDANTS' failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, PLAINTIFF HARTLEY was frequently if not always required to take shortened, on duty and/or interrupted unpaid meal periods and/or work through her unpaid meal periods completely due to the need to complete assigned job duties. Based on information and belief, DEFENDANTS would unlawfully edit the clock in and out times for PLAINTIFF HARTLEY's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods in order to display at least a thirty minute, timely, off-duty meal period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required PLAINTIFF HARTLEY and other NON-EXEMPT AGGRIEVED EMPLOYEES' to perform work-related tasks during their meal periods, resulting in DEFENDANTS' failure to compensate PLAINTIFF HARTLEY and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of wages owed to PLAINTIFF HARTLEY and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Similarly, at times, PLAINTIFF GARCIA was required to clock out for meal periods but to continue working due to the need to complete assigned work tasks, resulting in DEFENDANTS' failure to compensate PLAINTIFF GARCIA for all hours worked and the underpayment of wages owed to PLAINTIFF GARCIA.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet

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

For example, PLAINTIFF DOMINGUEZ was frequently required to complete off-the-clock work tasks, including without limitation, making and/or responding to work-related communications, including but not limited to, on PLAINTIFF DOMINGUEZ's purported days off, during unpaid meal periods and/or otherwise outside of scheduled shift times, resulting in DEFENDANTS' failure to compensate PLAINTIFF DOMINGUEZ for all work time and the underpayment of wages owed to PLAINTIFF DOMINGUEZ.

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

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required after working at their scheduled facility location to cover a shift and/or work a second shift at another of DEFENDANTS' facilities/locations but were not compensated for the time spent driving and/or traveling to the second facility and/or second location resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

For example, PLAINTIFF THORNTON reports there were numerous occasions when DEFENDANTS' electronic timekeeping device did not function properly such that PLAINTIFF THORNTON had to unplug the device, plug it back in, then wait for the system to reinitiate before she could clock in for the start of her shift. PLAINTIFF THORNTON and other NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or

back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum and overtime wages.

Based on information and belief, DEFENDANTS' Kronos timekeeping software was hacked in 2021 and/or later and DEFENDANTS failed to maintain accurate records of hours worked during pay periods following the hack and/or during the hack and instead paid NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, PLAINTIFF GARCIA, based on scheduled hours worked rather than actual hours worked and/or otherwise failed to pay for all hours worked due to a failure to maintain accurate records of the total hours worked, leading to unpaid minimum and overtime wages.

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

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable

work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFFS and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week. For example, wage statements issued by DEFENDANTS show DEFENDANTS rounded NON-EXEMPT AGGRIEVED EMPLOYEES' total hours worked to at least the nearest quarter, half and/or whole hour, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, DEFENDANTS rounded PLAINTIFF Phan's total hours worked on most if not all wage statements during the relevant period, resulting in the consistent underpayment of wages owed to PLAINTIFF Phan. Based on further information and belief, DEFENDANTS also rounded the total hours worked of other NON-EXEMPT AGGRIEVED EMPLOYEES during most if not all pay periods during the relevant period, resulting in DEFENDANTS failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of wages owed to those NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular

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

hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

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

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

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

Based on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently required to work beyond eight (8) hours on the seventh consecutive day of work in a work week without receiving proper overtime premiums for this work time, resulting in the underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, DEFENDANTS compensated PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES with non-discretionary bonuses/incentive pay, shift differential pay, and/or other non-discretionary remuneration during pay periods in which they worked overtime, yet DEFENDANTS failed to incorporate the non-discretionary bonuses/incentive pay and/or other non-discretionary compensation into the regular rate(s) of pay for purposes of calculating the owed overtime rate(s), resulting in DEFENDANTS' miscalculation and underpayment of overtime wages owed to PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

(C) Election Procedures Election procedures for the adoption and repeal of alternative workweek schedules require the following: (1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another. (2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non- English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing

of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. (7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election. (8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek.

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

On information and belief, PLAINTIFFS allege that DEFENDANTS failed to comply with the above procedures, and thus, failed to properly institute an alternative workweek for the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative workweek schedule. Based on information and belief, DEFENDANTS also failed to report the results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.

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

shift(s) in violation of the alternative workweek schedule, and in violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section 1198. As such, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS were also deprived of all owed overtime wages when required to work shortened shifts.

This conduct results in violations of Labor Code sections 218.5, 510, 511, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

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

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES would

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

have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

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

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

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

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

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

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

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

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

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

DEFENDANTS' issued wage statements to PLAINTIFFS and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFFS and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according

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

to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a).

Separately, and independent of the above allegations, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the total hours worked, in violation of including but not limited to, Labor Code section 226(a)(2).

Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

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

For example, based on information and belief, at times, DEFENDANTS issued wage statement(s) to PLAINTIFFS and/or other NON-EXEMPT AGGRIEVED EMPLOYEES, that list a category for "Retro" pay without including the inclusive dates of the accurate pay period for that "Retro" pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with, in violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section 226(a)(6).

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

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFFS and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based

on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

For example, based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or failure to list a category containing the proper overtime rate.

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

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

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

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

Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute’s provisions were violated.

Reporting Time Pay Violations:

Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, including but not limited to IWC Wage Order 1-2001, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Violation of California Day of Rest Law

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

Based on information and belief, DEFENDANTS have and continue to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, PLAINTIFFS and/or other NON-EXEMPT AGGRIEVED

EMPLOYEES were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551. For example, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to work each workday for at least several weeks consecutively without any day off, in violation of California's day of rest laws.

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

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

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

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

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

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

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

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code

section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

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

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

For example, DEFENDANTS failed to furnish PLAINTIFF HARTLEY with any final paycheck until at least one (1) week after DEFENDANTS terminated PLAINTIFF HARTLEY’s employment, and PLAINTIFF HARTLEY’s late final paycheck was devoid of all wages owed, including without limitation, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS’

lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

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

Violation of Labor Code Section 208:

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

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

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

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

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

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

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

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

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses, including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal cell phones/mobile devices, internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from including but not limited to supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks and/or were required to download and use work-related applications on their personal cell phones/mobile devices but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

For example, PLAINTIFF MARTINEZ was frequently required to make and/or respond to work-related communications using her personal cell phone/mobile device, including but not limited to, during the course of her shifts, however, DEFENDANTS did not provide PLAINTIFF MARTINEZ with any and/or full reimbursement for the business expenses she incurred in connection with being required to use her personal cell phone/mobile device to carry out her assigned job duties.

Similarly, at times, PLAINTIFF THORNTON received work-related calls and messages to her personal phone from managers and/or supervisors, including but not limited to, regarding scheduling/other work tasks. PLAINTIFF THORNTON was not reimbursed for these business expenses.

Based on information and belief, DEFENDANTS failed to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for expenses associated with having to purchase and/or maintain their own uniforms/work clothing/work shoes/personal protective/safety gear and/or hand tools and/or equipment required to perform their assigned job duties.

For example, PLAINTIFF DOMINGUEZ was required to purchase and maintain her own uniforms/work clothing/work shoes and/or protective/safety gear, including without limitation, scrubs that DEFENDANTS required PLAINTIFF DOMINGUEZ wear for work, however,

DEFENDANTS did not provide PLAINTIFF DOMINGUEZ with any and/or full reimbursement for these business expenses.

Likewise, PLAINTIFF HARTLEY was required to purchase and maintain her own uniforms/work clothing/work shoes and/or protective/safety gear, including without limitation, slip-resistant shoes and/or other uniforms/work clothing/shoes and/or personal protective/safety gear that DEFENDANTS required PLAINTIFF DOMINGUEZ wear for work, however, DEFENDANTS did not provide PLAINTIFF HARTLEY with any and/or full reimbursement for these business expenses PLAINTIFF HARTLEY incurred in connection with being required to purchase and/or maintain uniforms/work clothing/work shoes and/or personal protective and/or safety gear DEFENDANTS required PLAINTIFF HARTLEY wear for work.

Likewise, PLAINTIFF MARTINEZ was required to purchase and maintain her own uniforms/work clothing/work shoes and/or protective/safety gear, including without limitation, scrubs and/or other uniforms/work clothing/shoes and/or personal protective/safety gear that DEFENDANTS required PLAINTIFF DOMINGUEZ wear for work, however, DEFENDANTS did not provide PLAINTIFF MARTINEZ with any and/or full reimbursement for these business expenses PLAINTIFF MARTINEZ incurred in connection with being required to purchase and/or maintain uniforms/work clothing/work shoes and/or personal protective and/or safety gear DEFENDANTS required PLAINTIFF MARTINEZ wear for work.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or cost of fuel when they were required to drive between DEFENDANTS' facilities/job sites, and/or otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to work remotely, including but not limited to, from their homes. As a result of working from home, NON-EXEMPT AGGRIEVED EMPLOYEES were required to use their home internet, electricity, and other utilities in the discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue to lack a policy to reimburse employees who regularly increased utility expenses as a result of working from home. NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' increased utility and internet expenses were expenses for which DEFENDANTS were required to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES a reasonable percentage based on their required business use because said expenses were necessarily incurred by NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES as a direct consequence of the discharge of their duties of employment. However, DEFENDANTS failed to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for these business expenses incurred as a result of being required to work from their homes, in violation of California law. For example, based on information and belief,

DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to access certain documents, including but not limited to, pay stubs through DEFENDANTS' online portal using their personal computers and/or cell phones but fails to pay for a portion of NON-EXEMPT AGGRIEVED EMPLOYEES' electric and/or internet and/or cell phone bills.

Based on information and belief, DEFENDANTS fail and continue to fail to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for expenses NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES incurred in connection with DEFENDANTS' mandated testing and/or licensing requirements, and/or expenses incurred in obtaining certifications and/or re-certifications as required by DEFENDANTS.

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

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

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFFS, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFFS, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, unlawful forum selection clauses

and/or choice of law provisions/agreements, including but not limited to unlawful meal period waivers, and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

Labor Code section 432.6(a), provides that “a person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right...”Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to sign meal period waivers that were universally signed as a condition of employment, including but not limited to, during the onboarding process. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES to sign unlawful meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

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

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

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

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide

a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

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

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

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

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

As such, PLAINTIFFS, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

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

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

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages

allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

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

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

Kiara Bramasco, Esq.
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Main: 866.276.7637
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Thank you for your attention to this matter.

Best Regards,

A handwritten signature in cursive script, reading "Kiara Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC