

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

Attorneys for Plaintiff Juanita Lopez

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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Alecsondra McDonald, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

JUANITA LOPEZ, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

COVANTA PROJECTS, LLC, a Delaware
limited liability company; COVANTA
DELANO, INC., a Delaware corporation;
COVANTA ENVIRONMENTAL
SOLUTIONS, LLC, a Delaware limited
liability company; COVANTA
ENVIRONMENTAL SOLUTIONS
CARRIERS II, LLC, a Wisconsin limited
liability company; COVANTA LONG
BEACH RENEWABLE ENERGY CORP.,
a Delaware corporation; COVANTA
MENDOTA, LLC, a California limited
liability company; COVANTA
STANISLAUS, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CV-24-000752

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*

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- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
(10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Juanita Lopez, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

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

7 8 **THE PARTIES**

9 4. Plaintiff Juanita Lopez is a resident of Merced, in Merced County, California.
10 Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately
11 July 2022 to October 2023. Plaintiff worked for Defendants as an Auxiliary Operator out of
12 their facility in Crows Landing, California. During her employment, Plaintiff typically
13 worked twelve (12) hours per day and six (6) days per week. Plaintiff's primary job duties
14 included, without limitation, operating forklifts and mobile cranes, moving ash, conducting
15 checks on furnaces, and ensuring the proper functioning of equipment.

16 5. COVANTA PROJECTS, LLC was and is, upon information and belief, a
17 Delaware limited liability company, and at all times hereinafter mentioned, an employer
18 whose employees are engaged throughout this county and the State of California.

19 6. COVANTA DELANO, INC. was and is, upon information and belief, a
20 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
21 are engaged throughout this county and the State of California.

22 7. COVANTA ENVIRONMENTAL SOLUTIONS, LLC was and is, upon
23 information and belief, a Delaware limited liability company, and at all times hereinafter
24 mentioned, an employer whose employees are engaged throughout this county and the State of
25 California.

26 8. COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS II, LLC was and
27 is, upon information and belief, a Wisconsin limited liability company, and at all times
28 hereinafter mentioned, an employer whose employees are engaged throughout this county and

1 the State of California.

2 9. COVANTA LONG BEACH RENEWABLE ENERGY CORP. was and is,
3 upon information and belief, a Delaware corporation, and at all times hereinafter mentioned,
4 an employer whose employees are engaged throughout this county and the State of California.

5 10. COVANTA MENDOTA, LLC was and is, upon information and belief, a
6 California limited liability company, and at all times hereinafter mentioned, an employer
7 whose employees are engaged throughout this county and the State of California.

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

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

15 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
16 were the partners, agents, owners, or managers of COVANTA PROJECTS, LLC; COVANTA
17 DELANO, INC.; COVANTA ENVIRONMENTAL SOLUTIONS, LLC; COVANTA
18 ENVIRONMENTAL SOLUTIONS CARRIERS II, LLC; COVANTA LONG BEACH
19 RENEWABLE ENERGY CORP.; COVANTA MENDOTA, LLC; and COVANTA
20 STANISLAUS, INC. at all relevant times.

21 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
22 acts and omissions alleged herein was performed by, or is attributable to, COVANTA
23 PROJECTS, LLC; COVANTA DELANO, INC.; COVANTA ENVIRONMENTAL
24 SOLUTIONS, LLC; COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS II, LLC;
25 COVANTA LONG BEACH RENEWABLE ENERGY CORP.; COVANTA MENDOTA,
26 LLC; COVANTA STANISLAUS, INC.; and/or DOES 1 through 10 (collectively,
27 “Defendants” or “COVANTA”), each acting as the agent, employee, alter ego, and/or joint
28 venturer of, or working in concert with, each of the other co-Defendants and was acting within

1 the course and scope of such agency, employment, joint venture, or concerted activity with
2 legal authority to act on the others' behalf. The acts of any and all Defendants were in
3 accordance with, and represent, the official policy of Defendants.

4 15. At all relevant times, Defendants, and each of them, ratified each and every act
5 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
6 and abetted the acts and omissions of each and all the other Defendants in proximately causing
7 the damages herein alleged.

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

11 17. Under California law, Defendants are jointly and severally liable as employers
12 for the violations alleged herein because they have each exercised sufficient control over the
13 wages, hours, working conditions, and employment status of Plaintiff and class members.
14 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
15 controlled their work schedule and/or conditions of employment, determined their rate of pay,
16 and maintained their employment records. Defendants suffered or permitted Plaintiff and
17 class members to work and/or "engaged" Plaintiff and class members so as to create a
18 common-law employment relationship. As joint employers of Plaintiff and class members,
19 Defendants are jointly and severally liable for the civil penalties and all other relief available
20 to Plaintiff and class members under the law.

21 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
22 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
23 members because Defendants have:

24 (a) jointly exercised meaningful control over the work performed by
25 Plaintiff and class members;

26 (b) jointly exercised meaningful control over Plaintiff's and class members'
27 wages, hours, and working conditions, including the quantity, quality
28 standards, speed, scheduling, and operative details of the tasks

performed by Plaintiff and class members;

(c) jointly required that Plaintiff and class members perform work which is an integral part of Defendants' businesses; and

(d) jointly exercised control over Plaintiff and class members as a matter of economic reality in that Plaintiff and class members were dependent on Defendants, who shared the power to set the wages of Plaintiff and class members and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

20. COVANTA PROJECTS, LLC; COVANTA DELANO, INC.; COVANTA ENVIRONMENTAL SOLUTIONS, LLC; COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS II, LLC; COVANTA LONG BEACH RENEWABLE ENERGY CORP.; COVANTA MENDOTA, LLC; COVANTA STANISLAUS, INC.; and DOES 1 through 10 are therefore alter egos of each other.

21. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name COVANTA.

22. Plaintiff further alleges, upon information and belief, that Defendants COVANTA PROJECTS, LLC; COVANTA DELANO, INC.; COVANTA ENVIRONMENTAL SOLUTIONS, LLC; COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS II, LLC; COVANTA LONG BEACH RENEWABLE ENERGY CORP.; COVANTA MENDOTA, LLC; and COVANTA STANISLAUS, INC. are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website

(<https://bizfileonline.sos.ca.gov/>), COVANTA PROJECTS, LLC; COVANTA DELANO, INC.; COVANTA ENVIRONMENTAL SOLUTIONS, LLC; COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS II, LLC; COVANTA LONG BEACH RENEWABLE ENERGY CORP.; COVANTA MENDOTA, LLC; and COVANTA STANISLAUS, INC. share the same principal address and mailing address of “445 SOUTH ST[REET] MORRISTOWN, NJ 07960[-6475]”;

(b) On the California Secretary of State’s website, COVANTA PROJECTS, LLC; COVANTA DELANO, INC.; COVANTA ENVIRONMENTAL SOLUTIONS, LLC; COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS II, LLC; COVANTA LONG BEACH RENEWABLE ENERGY CORP.; COVANTA MENDOTA, LLC; and COVANTA STANISLAUS, INC. share the same agent for service of process, “C T CORPORATION SYSTEM”;

(c) According to their most recent “Statement of Information” forms filed with the California Secretary of State, COVANTA PROJECTS, LLC; COVANTA DELANO, INC.; COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS II, LLC; COVANTA LONG BEACH RENEWABLE ENERGY CORP.; COVANTA MENDOTA, LLC; and COVANTA STANISLAUS, INC. share the same officers, directors, and/or managers or members, including, but not limited to:

(i) Steve[n] Jones, who serves as Chief Executive Officer for COVANTA PROJECTS, LLC and COVANTA MENDOTA, INC.;

(ii) Azeez Mohammed, who serves as Chief Financial Officer for COVANTA DELANO, INC.; COVANTA LONG BEACH RENEWABLE ENERGY CORP.; and COVANTA

1 STANISLAUS, INC.; and as Manager and/or Member for
2 COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS
3 II, LLC;

4 (iii) Thomas [L] Kenyon, who serves as Secretary for
5 COVANTA DELANO, INC.; COVANTA LONG BEACH
6 RENEWABLE ENERGY CORP.; and COVANTA
7 STANISLAUS, INC.; and as Manager and/or Member for
8 COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS
9 II, LLC;

10 (iv) Gregg Kam, who serves as Chief Financial Officer for
11 COVANTA DELANO, INC.; COVANTA LONG BEACH
12 RENEWABLE ENERGY CORP.; and COVANTA
13 STANISLAUS, INC.; and as Manager and/or Member for
14 COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS
15 II, LLC; and

16 (d) On information and belief, COVANTA PROJECTS, LLC; COVANTA
17 DELANO, INC.; COVANTA ENVIRONMENTAL SOLUTIONS,
18 LLC; COVANTA ENVIRONMENTAL SOLUTIONS CARRIERS II,
19 LLC; COVANTA LONG BEACH RENEWABLE ENERGY CORP.;
20 COVANTA MENDOTA, LLC; and COVANTA STANISLAUS, INC.
21 utilize the same standardized employment forms and issue the same
22 employment policies.

23 **GENERAL ALLEGATIONS**

24 23. Defendants are a world leader in providing sustainable waste and energy
25 solutions for municipalities and commercial businesses, and operate at least five (5) waste
26 treatment and recycling facilities in California. Upon information and belief, Defendants
27 maintain a single, centralized Human Resources (“HR”) department at their company
28 headquarters in Morristown, New Jersey, which is responsible for the recruiting and hiring of

1 new employees, and communicating and implementing Defendants' company-wide policies,
2 including timekeeping policies and meal and rest period policies, to employees throughout
3 California.

4 24. In particular, Plaintiff and class members, on information and belief, received
5 the same standardized documents and/or written policies. Upon information and belief, the
6 usage of standardized documents and/or written policies, including new-hire documents,
7 indicate that Defendants dictated policies at the corporate level and implemented them
8 company-wide, regardless of their employees' assigned locations or positions. Upon
9 information and belief, Defendants set forth uniform policies and procedures in several
10 documents provided at an employee's time of hire.

11 25. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their company headquarters in Morristown, New Jersey, which processes
13 payroll for all non-exempt, hourly paid employees working for Defendants at their various
14 locations in California, including Plaintiff and class members. Based upon information and
15 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
16 employees in California, irrespective of their work locations. Upon information and belief,
17 Defendants process payroll for departing employees in the same manner throughout the State
18 of California, regardless of the manner in which each employee's employment ends.

19 26. Defendants continue to employ non-exempt or hourly paid employees in
20 California.

21 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
23 and advisors knowledgeable about California labor and wage law, employment and personnel
24 practices, and about the requirements of California law.

25 28. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
26 members were not paid for all hours worked because all hours worked were not recorded.

27 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive certain wages for

1 overtime compensation and that they were not receiving certain wages for overtime
2 compensation.

3 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to be paid at a regular rate
5 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
6 premiums, that included as eligible income all remuneration required by law, including but not
7 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
8 forms of compensation, but failed to include all forms of remuneration in calculating the
9 regular rate of pay for Plaintiff and class members.

10 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive at least minimum
12 wages for compensation and that they were not receiving at least minimum wages for work
13 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
14 and class members were not paid at least minimum wages for work done off-the-clock.

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to meal periods in
17 accordance with the California Labor Code and applicable IWC Wage Order or payment of
18 one (1) additional hour of pay at their regular rates of pay when they were not provided with
19 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
20 were not provided with all meal periods or payment of one (1) additional hour of pay at their
21 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
22 period.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to rest periods in
25 accordance with the California Labor Code and applicable IWC Wage Order or payment of
26 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
27 permitted to take a compliant rest period and that Plaintiff and class members were not
28 authorized and permitted to take compliant rest periods or provided with payment of one (1)

1 additional hour of pay at their regular rates of pay when they were not authorized and
2 permitted to take a compliant rest period.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive complete and
5 accurate wage statements in accordance with California law. In violation of the California
6 Labor Code, Plaintiff and class members were not provided complete and accurate wage
7 statements.

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

12 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to timely payment of all
14 wages earned upon termination of employment. In violation of the California Labor Code,
15 Plaintiff and class members did not receive payment of all wages due, including, but not
16 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
17 permissible time periods.

18 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and/or class members were entitled to receive sick leave
20 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
21 derived from incentive pay, nondiscretionary bonuses, shift differential pay, and/or other
22 forms of compensation. In violation of the California Labor Code, Defendants failed to
23 include all forms of remuneration in calculating the regular rate of pay for sick leave pay.

24 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to timely payment of wages
26 during their employment. In violation of the California Labor Code, Plaintiff and class
27 members did not receive payment of all wages, including, but not limited to, overtime wages,
28 minimum wages, and/or meal and rest period premiums, within permissible time periods.

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

5 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to the portion of wages
7 previously paid and subsequently unlawfully deducted by Defendants.

8 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to payment of wages as
10 designated by statute. In violation of the California Labor Code, Defendants secretly paid
11 Plaintiff and class members lower wages than required by statute while purporting to pay
12 them proper wages.

13 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and/or class members were entitled to receive sick leave
15 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
16 derived from incentive pay, nondiscretionary bonuses, shift differential pay, and/or other
17 forms of compensation. In violation of the California Labor Code, Defendants failed to
18 include all forms of remuneration in calculating the regular rate of pay for sick leave pay.

19 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to one day's rest in seven.
21 In violation of the California Labor Code, Defendants required Plaintiff and class members to
22 work more than six consecutive days without a day of rest, where the total hours worked
23 exceeded 30 hours in any week or six hours in any one day thereof.

24 44. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
27 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
28 falsely represented to Plaintiff and class members that they were properly denied wages, all in

1 order to increase Defendants' profits.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 45. At all times herein set forth, PAGA provides that any provision of law under
4 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
5 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
6 violations of the California Labor Code and applicable IWC Wage Order may, as an
7 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
8 themselves and other current or former employees pursuant to procedures outlined in
9 California Labor Code section 2699.3.

10 46. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
11 person who was employed by the alleged violator and against whom one or more of the
12 alleged violations was committed."

13 47. Plaintiff and other current and former employees of Defendants are "aggrieved
14 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
15 or former employees and one or more of the alleged violations were committed against them.

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

19 (a) The aggrieved employee or representative shall give written notice by
20 online filing with the LWDA and by certified mail to the employer of
21 the specific provisions of the California Labor Code alleged to have
22 been violated, including the facts and theories to support the alleged
23 violation.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).

27 (c) The LWDA shall notify the employer and the aggrieved employee or
28 representative by certified mail that it does not intend to investigate the

1 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
2 the postmark date of the aggrieved employee’s notice. Upon receipt of
3 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
4 (65) calendar days of the postmark date of the aggrieved employee’s
5 notice, the aggrieved employee may commence a civil action pursuant
6 to California Labor Code section 2699 to recover civil penalties.

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

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of
13 the specific provisions of the California Labor Code alleged to have
14 been violated (other than those listed in Section 2699.5), including the
15 facts and theories to support the alleged violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(c) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The employer may cure the alleged violation within thirty-three (33)
20 calendar days of the postmark date of the notice sent by the aggrieved
21 employee or representative. The employer shall give written notice
22 within that period of time by certified mail to the aggrieved employee or
23 representative and by online filing with the LWDA if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the aggrieved employee may
27 commence a civil action pursuant to Section 2699.

28 50. On February 22, 2024, Plaintiff provided written notice by online filing to the

1 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
4 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
5 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
6 Plaintiff PAGA Case Number LWDA-CM-1012636-24. A true and correct copy of Plaintiff's
7 written notices to the LWDA and Defendants are attached hereto as "Exhibit 1."

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

11 52. Thus, Plaintiff has satisfied the administrative prerequisites under California
12 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
13 violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a),
14 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

15 53. Labor Code section 558(a) provides "[a]ny employer or other person acting on
16 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare
18 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
19 dollars (\$50) for each underpaid employee for each pay period for which the employee was
20 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was underpaid" Labor
22 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
23 to any other civil or criminal penalty provided by law."

24 54. Defendants, at all times relevant to this complaint, were employers or persons
25 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
26 rights by violating various sections of the California Labor Code as set forth above.

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

Order.

56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

CLASS ACTION ALLEGATIONS

57. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

58. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

59. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

60. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

61. Members of the Class and Subclass are referred to herein as "class members."

62. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

63. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

(a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty

(40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;

(b) Whether Defendants failed to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members;

(c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;

(d) Whether Defendants failed to provide Plaintiff and class members with meal periods;

(e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;

(f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);

(g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(h) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members upon their discharge;

(i) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members during their employment;

(j) Whether Defendants issued instruments for the payment of wages that were not payable in cash, on demand, without discount, and with prior authorization, in violation of Labor Code sections 212 and 213;

(k) Whether Defendants unlawfully deducted a portion of wages previously paid to Plaintiff and class members, in violation of California Labor

Code sections 221 and 224;

- (l) Whether Defendants secretly paid Plaintiff and class members lower wages than required by statute while purporting to pay the proper wages, in violation of California Labor Code section 223;
- (m) Whether Defendants failed to properly calculate the regular rate of pay upon which Plaintiff's and/or class members' sick leave rate of pay was based, as required by California Labor Code section 246;
- (n) Whether Defendants failed to provide Plaintiff and class members one day's rest in seven;
- (o) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (p) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

64. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-

1 defined community of interest and typicality of claims, as demonstrated
2 herein. Plaintiff acknowledges that she has an obligation to make
3 known to the Court any relationship, conflicts or differences with any
4 class member. Plaintiff's attorneys, the proposed class counsel, are
5 versed in the rules governing class action discovery, certification, and
6 settlement. Plaintiff has incurred, and throughout the duration of this
7 action, will continue to incur costs and attorneys' fees that have been,
8 are, and will be necessarily expended for the prosecution of this action
9 for the substantial benefit of each class member.

10 (d) Superiority: The nature of this action makes the use of class action
11 adjudication superior to other methods. A class action will achieve
12 economies of time, effort, and expense as compared with separate
13 lawsuits, and will avoid inconsistent outcomes because the same issues
14 can be adjudicated in the same manner and at the same time for the
15 entire class.

16 (e) Public Policy Considerations: Employers in the State of California
17 violate employment and labor laws every day. Current employees are
18 often afraid to assert their rights out of fear of direct or indirect
19 retaliation. Former employees are fearful of bringing actions because
20 they believe their former employers might damage their future
21 endeavors through negative references and/or other means. Class
22 actions provide the class members who are not named in the complaint
23 with a type of anonymity that allows for the vindication of their rights
24 while simultaneously protecting their privacy.

25 **FIRST CAUSE OF ACTION**

26 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

27 **(Against all Defendants)**

28 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 66. Labor Code section 1198 makes it illegal to employ an employee under
3 conditions of labor that are prohibited by the applicable wage order. California Labor Code
4 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
5 be the . . . standard conditions of labor for employees. The employment of any employee . . .
6 under conditions of labor prohibited by the order is unlawful.”

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

11 68. Specifically, the applicable IWC Wage Order provides that Defendants are and
12 were required to pay Plaintiff and class members working more than eight (8) hours in a day
13 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
14 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
15 workweek.

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

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

27 71. During the relevant time period, Defendants willfully failed to pay all overtime
28 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and

1 class members were not paid overtime premiums for all of the hours they worked in excess of
2 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
3 hours in a week, because all hours worked were not recorded.

4 72. First, during the relevant time period, Defendants had, and continue to have, a
5 company-wide policy and/or practice of discouraging and impeding Plaintiff and class
6 members from recording hours worked that were outside of their scheduled shifts in order to
7 limit the amount of overtime and/or double-time employees could accrue. On information and
8 belief, this policy of limiting overtime, coupled with Defendants' practices of understaffing
9 and assigning heavy workloads (*see infra*), led Plaintiff and class members to work off-the-
10 clock outside of their scheduled shift times. For example, Plaintiff and class members were
11 required to change into their uniforms and/or don personal protective equipment ("PPE"),
12 such as reflective and flame-resistant shirts and pants, steel-toed boots, hard hats, and safety
13 glasses on Defendants' premises. As another example, after clocking out at the end of their
14 shifts, Plaintiff and class members were required to change out of their uniforms and/or doff
15 PPE and drop them off in a designated area before they could go home for the day, which took
16 at least three (3) minutes per day. However, Defendants did not allow Plaintiff and class
17 members to report all of the time spent donning and doffing their uniforms and/or PPE at the
18 beginning and end of their shifts or during their meal periods, despite being on Defendants'
19 premises and under Defendants' control. As a result, Plaintiff and class members were
20 required to spend time donning and doffing their uniforms and/or PPE off-the-clock.

21 73. Second, Defendants had, and continue to have, company-wide policies and/or
22 practices of understaffing their locations while assigning heavy workloads, resulting in a
23 failure to provide Plaintiff and class members with adequate meal period coverage.
24 Defendants also had a practice of failing to schedule meal periods which, in conjunction with
25 the assignment of heavy workloads, further caused Plaintiff and class members to not be
26 relieved of their duties for compliant meal periods. As a result of this lack of meal period
27 coverage, Plaintiff and class members were not always afforded uninterrupted 30-minute meal
28 periods during shifts when they were entitled to receive a meal period. For example, Plaintiff

1 was required to complete and perform multiple, time-sensitive inspections of Defendants'
2 facility to closely monitor equipment functionality, involving detailed checklists, on a daily
3 basis, which caused her to work through her unpaid meal periods and have her meal periods
4 cut short.

5 74. Additionally, Defendants had a company-wide practice and/or policy of
6 requiring that Plaintiff and class members carry and respond to company-issued radios at all
7 times, including during meal periods. For example, Plaintiff would have her meal periods
8 interrupted because she was required to answer calls from her supervisors on her company-
9 issued radio and return to work immediately to assess an urgent situation with a
10 malfunctioning machine. Thus, Plaintiff and class members worked through meal periods
11 and/or had them interrupted to handle their assigned workloads and responsibilities, and
12 Defendants did not pay Plaintiff and class members for the time they continued to perform
13 tasks during meal periods.

14 75. Further, on information and belief, because Defendants frowned upon
15 employees accruing meal period penalties, Defendants' management pressured employees to
16 clock out for meal periods to reflect compliant meal periods, regardless of whether they had
17 received a compliant meal period or not, in order to limit meal penalties that would need to be
18 paid by Defendants. Thus, Defendants did not record all hours worked during meal periods,
19 and Plaintiff and class members performed work during meal periods for which they were not
20 paid.

21 76. Defendants knew or should have known that as a result of these company-wide
22 practices and/or policies, Plaintiff and class members were performing their assigned duties
23 off-the-clock and during meal periods, and were suffered or permitted to perform work for
24 which they were not paid. Because Plaintiff and class members sometimes worked shifts of
25 eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock
26 work qualified for overtime premium pay. Therefore, Plaintiff and class members were not
27 paid overtime wages for all of the overtime hours they actually worked.

28 77. Moreover, Defendants did not pay Plaintiff and class members the correct

overtime and/or double-time wage rates for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, on information and belief, Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime and/or double-time wage rates. Therefore, during times when Plaintiff and class members worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying lower overtime and/or double-time rates than required.

78. For example, Defendants paid Plaintiff and class members incentive pay and/or nondiscretionary bonuses, which were listed on Plaintiff's and class members' wage statements as "Signing Bonus" and "Bonus." During pay periods that Plaintiff and class members were paid overtime and/or double-time wages, Defendants did not incorporate these payments into Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime and/or double-time hours worked. Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay for overtime wages, and during pay periods that Plaintiff and class members worked more than twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work, Defendants paid Plaintiff and class members two (2) times their hourly rate of pay instead of two (2) times their regular rate of pay for double-time wages. Defendants' failure to properly calculate the overtime and/or double-time rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and class members on a company-wide basis.

79. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover from Defendants their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

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

81. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

82. As set forth above, as a result of Defendants’ policy of limiting the amount of overtime and/or double-time employees could accrue, Defendants required Plaintiff and class members to perform work off-the-clock before and after their scheduled start and end times. As stated, Defendants required Plaintiff and class members to don and doff uniforms and/or PPE while off-the-clock, including when entering the premises before clocking in prior to a shift or when returning from a meal period and when exiting the premises after clocking out at the end of a shift or when leaving for a meal period. Defendants failed to track all of this time Plaintiff and class members spent working off-the-clock, and thus, Plaintiff and class members received no compensation for this time.

83. Additionally, as set forth above, due to Defendants’ policies and/or practices of understaffing while assigning heavy workloads, failing to schedule meal periods, and subsequent lack of meal period coverage, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, time for which they were not paid. Moreover, as also stated, Defendants had a company-wide policy and/or practice of requiring that Plaintiff and

1 class members carry a company-issued radio to respond to requests at all times, including
2 during meal periods. Further, on information and belief, to limit the meal penalties that
3 Defendants would otherwise owe, Defendants pressured Plaintiff and class members to clock
4 out for meal periods to reflect compliant meal periods, but required them to continue working,
5 time for which they were not paid.

6 84. Defendants did not pay minimum wages for all hours worked by Plaintiff and
7 class members. To the extent that these off-the-clock hours did not qualify for overtime
8 premium payment, Defendants did not pay at least minimum wages for those hours worked
9 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
10 1198.

11 85. Defendants' failure to pay Plaintiff and class members minimum wages violates
12 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
13 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
14 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
15 interest thereon.

16 **THIRD CAUSE OF ACTION**

17 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 18 **Violations** 19 **(Against all Defendants)**

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

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

1 88. At all relevant times herein set forth, California Labor Code sections 226.7,
2 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
3 meal period mandated by an applicable order of the IWC.

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

11 90. Under California law, an employer cannot evade meal period requirements via
12 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
13 *Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be
14 provided with the opportunity to eat his or her meal while performing the duties required and
15 any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long.
16 *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141
17 (2019).

18 91. First, as stated, Defendants had, and continue to have, company-wide policies
19 and/or practices of understaffing while assigning heavy workloads, which has resulted in a
20 lack of meal period coverage and prevented Plaintiff and class members from taking all
21 timely, uninterrupted meal periods to which they were entitled. Further, as stated, Defendants
22 had a company-wide practice and/or policy of failing to schedule meal periods, which further
23 caused Plaintiff and class members to not be relieved of their duties for compliant meal
24 periods. Moreover, as stated, Defendants had a company-wide policy and/or practice of
25 requiring that Plaintiff and class members carry a company-issued radio to respond to requests
26 at all times, including during meal periods. As also stated, Plaintiff and class members had
27 their meal periods cut short because they were required to don and doff their uniforms and/or
28 PPE when entering the work premises to return from a meal period and/or when exiting the

1 premises to leave for a meal period.

2 92. As a result, Plaintiff and class members had to work through all or part of their
3 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
4 before taking meal periods. For example, as stated, Plaintiff was required to work straight
5 through her meal periods due to the lack of coverage and had her meal periods interrupted by
6 supervisors calling her on her company-issued radio and requiring she attend to an urgent
7 situation. Additionally, Plaintiff sometimes took her meal periods late, after the fifth hour of
8 work, due to the lack of coverage.

9 93. Second, as stated above, on information and belief, because Defendants
10 frowned upon employees accruing meal period penalties, Defendants' management pressured
11 Plaintiff and class members to clock out for meal periods to reflect compliant meal periods,
12 even when they did not receive a compliant meal period. For example, Plaintiff was required
13 to clock out for her first meal periods to record that she had received compliant meal periods
14 on shifts when she had not, in fact, received these timely, uninterrupted meal periods.

15 94. Third, Defendants did not provide Plaintiff and class members with second 30-
16 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
17 her employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was
18 never provided a second 30-minute meal period. Plaintiff and class members did not sign
19 valid meal period waivers on days that they were entitled to meal periods and were not
20 relieved of all duties. To the extent Defendants required Plaintiff and class members to sign
21 written "on-duty" meal period agreements, such agreements are invalid as the nature of the
22 work performed by Plaintiff and class members and do not necessitate an "on-duty" meal
23 period under California law.

24 95. Moreover, Defendants had a company-wide policy of requiring all newly hired
25 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
26 the position that non-exempt, hourly paid employees had waived their rights to first and/or
27 second meal periods for the entirety of their employment and, on that basis, did not provide
28 them with all meal periods to which they were entitled. Additionally, Defendants' "California

1 Non-Exempt Employee Meal Period Waiver Form” form requires employees provide one
2 day’s advanced written notice should they wish to revoke the waiver. Defendants’
3 presumption that meal periods would not be provided for shifts in excess of five (5) hours but
4 less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12)
5 hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on
6 employees to revoke the waivers in advance in writing, discouraged and impeded Plaintiff and
7 class members from taking all meal periods to which they were entitled.

8 96. Furthermore, an employer’s obligation to provide a meal period is only
9 “triggered” when the employer “employs an employee for a work period of more than five
10 hours per day.” Brinker, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits
11 anyone to work for a full five hours, its meal break obligation is triggered”).

12 [A]fter the meal break obligation is triggered . . . an employer is put to a
13 choice: it must (1) afford an off-duty meal period; (2) consent to a
14 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
15 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

16 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
17 required Plaintiff and class members to sign meal period waivers in advance (as opposed to on
18 a specific work day) renders them invalid and unenforceable, because Defendants’ obligation
19 to provide Plaintiff and class members with meal periods did not arise until Defendants had
20 employed them for a full five (5) hours.

21 97. At all times mentioned herein, Defendants knew or should have known that as a
22 result of their policies, Plaintiff and class members were prevented from being relieved of all
23 duties and required to perform some of their assigned duties during meal periods. Defendants
24 further knew or should have known that they did not pay Plaintiff and class members all meal
25 period premiums when meal periods were late, interrupted, shortened, and/or missed.

26 98. Furthermore, Defendants engaged in a company-wide practice and/or policy of
27 not paying all meal period premiums owed when compliant meal periods are not provided.
28 Because of this practice and/or policy, Plaintiff and class members have not received premium

1 pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that
2 Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted
3 meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
4 premiums because Defendants systematically failed to include all forms of compensation,
5 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the
6 regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members
7 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
8 and failed to pay the full meal period premiums due.

9 99. Defendants' conduct violates the applicable IWC Wage Order, and California
10 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
11 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
12 rate of compensation for each work day that the meal period was not provided.

13 **FOURTH CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 15 **(Against all Defendants)**

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

18 101. At all relevant times herein set forth, the applicable IWC Wage Order and
19 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
20 members' employment by Defendants.

21 102. At all relevant times, the applicable IWC Wage Order provides that "[e]very
22 employer shall authorize and permit all employees to take rest periods, which insofar as
23 practicable shall be in the middle of each work period" and that the "rest period time shall be
24 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
25 hours or major fraction thereof" unless the total daily work time is less than three and one-half
26 (3 ½) hours.

27 103. At all relevant times, California Labor Code section 226.7 provides that no
28 employer shall require an employee to work during any rest period mandated by an applicable

1 order of the California IWC. To comply with its obligation to authorize and permit rest
2 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
3 employer must “relinquish any control over how employees spend their break time, and
4 relieve their employees of all duties—including the obligation that an employee remain on
5 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
6 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
7 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
8 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
9 required rest period was not authorized and permitted.

10 104. During the relevant time period, Defendants regularly failed to authorize and
11 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
12 period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or
13 practices of understaffing while assigning heavy workloads, and their requirement that
14 employees carry a company-issued radio at all times, including during rest periods, prevented
15 Plaintiff and class members from being relieved of all duty in order to take their rest periods.
16 Defendants also failed to schedule rest periods, which, coupled with Defendants’ failure to
17 provide adequate rest period coverage, further led to Plaintiff and class members not being
18 authorized and permitted to take compliant rest periods.

19 105. Furthermore, on information and belief, Defendants maintained and
20 implemented a company-wide on-premises rest period policy, which effectively required that
21 Plaintiff and class members remain on the premises during their rest periods. Because
22 Plaintiff and class members were restricted from leaving Defendants’ premises during rest
23 periods, they were denied the ability to use their rest periods freely for their own purposes,
24 such as completing personal errands. Thus, Defendants effectively maintained control over
25 Plaintiff and class members during rest periods.

26 106. As a result of Defendants’ practices and policies, Plaintiff and class members
27 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
28 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had

1 to forego some of her rest periods in order to handle the heavy workload and due to the lack of
2 coverage. When Plaintiff was able to take her rest periods, they were interrupted by
3 Defendants' management calling Plaintiff on her company-issued radio to discuss work-
4 related matters.

5 107. Defendants have also engaged in a systematic, company-wide practice and/or
6 policy of not paying rest period premiums owed when rest periods are not authorized and
7 permitted. Because of this practice and/or policy, Plaintiff and class members have not
8 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
9 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
10 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
11 premiums because Defendants failed to include all forms of compensation, such as incentive
12 pay, nondiscretionary bonuses, and/or other forms of remuneration. As a result, Defendants
13 denied Plaintiff and class members rest periods and failed to pay them rest period premiums
14 due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

15 108. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
17 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
18 compensation for each work day that a compliant rest period was not authorized and
19 permitted.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 22 **Statements and Failure to Maintain Accurate Payroll Records** 23 **(Against all Defendants)**

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

26 110. At all relevant times herein set forth, California Labor Code section 226(a)
27 provides that every employer shall furnish each of his or her employees an accurate and
28 complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total
2 hours worked, and all applicable rates of pay.

3 111. At all relevant times, Defendants have knowingly and intentionally provided
4 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
5 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
6 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
7 applicable hourly rates in effect during the pay period, including rates of pay for overtime
8 wages and/or meal and rest period premiums, and the corresponding number of hours worked
9 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
10 and 226(a)(9).

11 112. Because Defendants did not accurately record the time Plaintiff and Subclass
12 members spent working off-the-clock, Defendants did not list the correct amount of gross
13 wages and net wages earned by Plaintiff and Subclass members in compliance with sections
14 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
15 number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2),
16 and failed to list the applicable hourly rates of pay in effect during the pay period and
17 corresponding accurate number of work hours worked at each hourly rate in violation of
18 section 226(a)(9).

19 113. In addition, because Defendants did not calculate Plaintiff's and Subclass
20 members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
21 rest period premiums, Defendants did not list the correct amount of gross wages in compliance
22 with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of
23 net wages in violation of section 226(a)(5). Defendants also failed to correctly list all
24 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
25 overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

26 114. The wage statement deficiencies also include, without limitation, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
28 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period

1 for which employees were paid; failing to list the name of the employee and only the last four
2 digits of his or her social security number or an employee identification number other than a
3 social security number; failing to list the name and address of the legal entity that is the
4 employer; and/or failing to state all hours worked as a result of not recording or stating hours
5 worked off-the-clock. In addition, Defendants failed to provide Plaintiff and class members
6 the option to elect to receive hard copies of their wage statements at any time and/or failed to
7 provide them with the ability to easily access the information and convert the wage statements
8 into hard copies at no expense to them.

9 115. California Labor Code section 1174(d) provides that “[e]very person employing
10 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
11 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
12 plants or establishments at which employees are employed, payroll records showing the hours
13 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
14 applicable piece rate paid to, employees employed at the respective plants or
15 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
16 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
17 members showing the daily hours they worked and the wages paid thereto as a result of failing
18 to record the off-the-clock hours that they worked.

19 116. California Labor Code section 1198 provides that the maximum hours of work
20 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
21 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
22 employment of any employees for longer hours than those fixed by the order or under
23 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
24 Wage Order, employers are required to keep accurate time records showing when the
25 employee begins and ends each work period. During the relevant time period, Defendants
26 engaged in company-wide practices and/or policies of failing to record actual hours worked,
27 and thereby failed to keep accurate records of work period and meal period start and end times
28 for Plaintiff and Subclass members, in violation of section 1198. Also, in light of Defendants’

1 failure to provide Plaintiff and Subclass members with second 30-minute meal periods to
2 which they were entitled, Defendants kept no records of meal start and end times for second
3 meal periods.

4 117. Plaintiff and Subclass members are entitled to recover from Defendants the
5 greater of their actual damages caused by Defendants' failure to comply with California Labor
6 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
7 employee.

8 **SIXTH CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**

10 **Termination**

11 **(Against all Defendants)**

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

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

21 120. On information and belief, Defendants have a company-wide practice and/or
22 policy of paying departing employees their final wages late, instead of adhering to the time
23 requirements set forth in Labor Code sections 201 and 202. For example, Defendants
24 terminated Plaintiff's employment on or about October 30, 2023; however, Defendants did not
25 provided Plaintiff with her final wages until about November 3, 2023. Thus, Defendants
26 failed to pay Plaintiff her final wages immediately, in violation of California Labor Code
27 section 201.

28 121. Additionally, Defendants willfully failed to pay Plaintiff and class members

1 who are no longer employed by Defendants the earned and unpaid wages set forth above,
2 including but not limited to, overtime wages, minimum wages, and/or meal and rest period
3 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving
4 Defendants' employ.

5 122. Defendants' failure to pay Plaintiff and class members who are no longer
6 employed by Defendants their wages earned and unpaid at the time of discharge, or within
7 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
8 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
9 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
10 thirty (30) day maximum pursuant to California Labor Code section 203.

11 SEVENTH CAUSE OF ACTION

12 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 13 **Employment** 14 **(Against all Defendants)**

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

17 124. This cause of action is dependent upon, and wholly derivative of, the overtime
18 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
19 Plaintiff and class members during their employment.

20 125. At all times relevant herein set forth, Labor Code section 204 provides that all
21 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
22 days, inclusive, of any calendar month, other than those wages due upon termination of an
23 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
24 the month during which the labor was performed.

25 126. At all times relevant herein, Labor Code section 204 provides that all wages
26 earned by any person in any employment between the sixteenth (16th) and the last day,
27 inclusive, of any calendar month, other than those wages due upon termination of an
28 employee, are due and payable between the first (1st) and the tenth (10th) day of the following

1 month.

2 127. At all times relevant herein, Labor Code section 204 provides that all wages
3 earned for labor in excess of the normal work period shall be paid no later than the payday for
4 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
5 204 provides that the requirements of this section are deemed satisfied by the payment of
6 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
7 seven (7) calendar days following the close of the payroll period.

8 128. During the relevant time period, Defendants willfully failed to pay Plaintiff and
9 class members all wages due including, but not limited to, overtime wages, minimum wages,
10 and/or meal and rest period premiums, within the time periods specified by California Labor
11 Code section 204.

12 129. Defendants' failure to pay Plaintiff and class members all wages due violates
13 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
14 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

15 **EIGHTH CAUSE OF ACTION**

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

17 **(Against all Defendants)**

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

20 131. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
22 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221,
23 223, 224, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, and 1198. Labor
24 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
25 penalties for violations of those Labor Code sections not found in section 2699.5, including
26 sections 246, 516, and 1182.12.

27 132. Defendants' conduct, as alleged herein, violates numerous sections of the
28 California Labor Code, including, but not limited to, the following:

- 1 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
2 Wage Order for Defendants' failure to compensate Plaintiff and other
3 aggrieved employees with all required overtime pay, as alleged herein;
- 4 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
5 applicable IWC Wage Order for Defendants' failure to include all forms
6 of remuneration in the regular rate of pay as required by law for
7 purposes of paying overtime wages and/or meal and rest period
8 premiums to Plaintiff and other aggrieved employees, as alleged herein;
- 9 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
10 1198, and the applicable IWC Wage Order for Defendants' failure to
11 compensate Plaintiff and other aggrieved employees with at least
12 minimum wages for all hours worked, as alleged herein;
- 13 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
15 and other aggrieved employees with meal periods, as alleged herein;
- 16 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
17 applicable IWC Wage Order for Defendants' failure to authorize and
18 permit Plaintiff and other aggrieved employees to take rest periods, as
19 alleged herein;
- 20 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
21 IWC Wage Order for failure to provide accurate and complete wage
22 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 23 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
24 IWC Wage Order for failure to maintain payroll records, as alleged
25 herein;
- 26 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
27 earned wages upon termination, as alleged herein;
- 28 (i) Violation of Labor Code section 204 for failure to pay all earned wages

during employment, as alleged herein;

- (j) Violation of Labor Code sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand, without discount, and with prior authorization, as set forth below;
- (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to other aggrieved employees, as set forth below;
- (l) Violation of Labor Code section 223 for secretly paying Plaintiff and/or other aggrieved employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (m) Violation of Labor Code section 246 for failure to properly calculate the sick leave paid to other aggrieved employees, as set forth below; and
- (n) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to Plaintiff and other aggrieved employees, as set forth below.

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

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

12
13 134. In addition, employers can only utilize payroll debit card programs if they
14 provide employees with effective access to their wages without discount. The DLSE has
15 interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards
16 where the following requirements are satisfied:

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

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

25 135. Further, the DLSE notes that the Labor Code manifests:

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

29 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
30 providers “effectively act as agents of the client employers in discharging the employer’s
31 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the
32 Labor Code does not purport to regulate the specific arrangements between employers and
33 payroll service providers, both an employer and, under the express language in Labor Code
34 § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

1 136. During the relevant time period, Defendants had an agreement with a payroll
2 service provider, Wisely, for the issuance of payroll debit cards to employees, including
3 Plaintiff and other aggrieved employees, to discharge their wage payment obligations to their
4 employees. On information and belief, Defendants had a practice and/or policy of
5 automatically issuing payroll debit cards to departing employees without giving them the
6 option to elect their form of payment for their final wages. For example, Plaintiff received her
7 final wages on a payroll debit card without a choice of an alternate method of payment, such
8 as a written check. Instead, Defendants automatically enrolled Plaintiff in their payroll debit
9 card program for the purpose of issuing Plaintiff's final wages to her without prior, voluntary
10 approval from Plaintiff.

11 137. Moreover, under Defendants' payroll debit card program, Plaintiff and other
12 aggrieved employees did not have easy access to the entirety of their wages without incurring
13 a fee. Plaintiff and other aggrieved employees were unable to withdraw their entire wages in
14 at least one transaction without incurring a fee, which resulted in a discount in their pay. For
15 example, Plaintiff was subjected to transaction fees when withdrawing her wages from an out-
16 of-network ATM. Thus, Defendants' payroll debit card program was and continues to be
17 unlawful as it did not give Plaintiff and other aggrieved employees access to their entire
18 wages without discount and without delay.

19 138. California courts recognize a policy favoring the full and prompt payment of
20 wages to employees. Defendants' payroll card program is inconsistent with this policy
21 because it presents a number of obstacles and hurdles that, together, make it difficult for
22 Plaintiff and other aggrieved employees to access their entire wages without discount and
23 without delay, in violation of California Labor Code sections 212 and 213. Plaintiff and other
24 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
25 sections 225.5 and/or 2699(a), (f), and (g).

26 139. At all relevant times herein, California Labor Code section 221 provides that it
27 shall be unlawful for any employer to collect or receive from an employee any part of wages
28 theretofore paid by said employer to said employee. California Labor Code section 224 also

1 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
2 deduction is expressly authorized in writing by the employee."

3 140. During the relevant time period, Defendants unlawfully deducted a portion of
4 wages previously paid to Plaintiff and/or other aggrieved employees in violation of California
5 Labor Code section 221. On information and belief, Defendants systematically, and on a
6 company-wide basis, provided Plaintiff and other aggrieved employees with payroll debit
7 cards as payment of their wages and/or final wages. Under Defendants' payroll debit card
8 program, Plaintiff and other aggrieved employees were assessed various fees in connection
9 with their use of the payroll debit cards. For example, as described above, Plaintiff and other
10 aggrieved employees were required to pay out-of-network ATM withdrawal fees and other
11 fees to obtain and/or spend their earned and due wages. The fees charged to Plaintiff and
12 other aggrieved employees resulted in a discount of their wages.

13 141. Defendants' payroll debit card program, which resulted in a discount of wages
14 to employees, are tantamount to taking deductions from Plaintiff's and other aggrieved
15 employees' paychecks without their written authorization and therefore constitutes an
16 unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Plaintiff and
17 other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
18 Code sections 225.5 and/or 2699(a), (f), and (g).

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

22 143. During the relevant time period, Defendants willfully and systematically issued
23 payroll debit cards to Plaintiff and other aggrieved employees that discounted their wages by
24 charging various fees in connection with the use of the payroll debit cards. Defendants'
25 payroll debit card program resulted in the payment of less than statutorily required wages to
26 Plaintiff and other aggrieved employees. Thus, Defendants paid Plaintiff and other aggrieved
27 employees lower wages than those they were entitled to while purporting that Plaintiff and
28 other aggrieved employees were properly paid.

1 144. Defendants' failure to pay Plaintiff and other aggrieved employees the correct
2 designated wages, while purporting to pay legal wages, is a violation of California Labor
3 Code section 223. Plaintiff and other aggrieved employees are therefore entitled to recover
4 civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

5 145. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
6 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
7 days from the commencement of employment with paid sick days, to be accrued at least one
8 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
9 employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time
10 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
11 the workweek in which the employee uses paid sick time, whether or not the employee
12 actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt
13 employees shall be calculated by dividing the employee's total wages, not including overtime
14 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
15 days of employment."

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

27 147. Defendants' failure to properly calculate the sick leave rates of pay based on all
28 remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved

1 employees on a company-wide basis in violation of California Labor Code section 246(l).
2 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
3 Code sections 248.5 and/or 2699(a), (f), and (g).

4 148. At all relevant times herein, California Labor Code section 551 provides that
5 every person employed in any occupation of labor is entitled to one day's rest in seven.
6 Additionally, Labor Code section 552 prohibits employers from requiring employees to work
7 more than six consecutive days without a day of rest. Further, Labor Code section 556
8 exempts an employer from the day-of-rest requirement when the total hours worked by an
9 employee do not exceed 30 hours in any week or six hours in any one day thereof.

10 149. During the relevant time period, on information and belief, Defendants
11 scheduled Plaintiff and other aggrieved employees to work six (6) or more hours per day and
12 seven (7) consecutive days in a workweek. Because Plaintiff and other aggrieved employees
13 worked over 30 hours per week and over six (6) hours per day in any one day in a workweek,
14 they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and other
15 aggrieved employees may have signed purported waivers of their right to a day's rest in seven,
16 such waivers are invalid.

17 150. Thus, Defendants willfully caused Plaintiff and other aggrieved employees to
18 work more than six days in seven, in violation of Labor Code sections 551 and 552. Plaintiff
19 and other aggrieved employees are therefore entitled to recover civil penalties pursuant to
20 Labor Code sections 558 and/or 2699(a), (f), and (g).

21 **NINTH CAUSE OF ACTION**

22 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

23 **Unlawful Business Practices**

24 **(Against all Defendants)**

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

27 152. Defendants are "persons" as defined by California Business & Professions
28 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

2 153. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
4 suffered injury in fact and has lost money as a result of Defendants' unlawful business
5 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
6 meaning of Code of Civil Procedure section 1021.5.

7 154. Defendants' activities, as alleged herein, are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business &
9 Professions Code sections 17200, *et seq.*

10 155. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
12 policies and practices have violated state law in at least the following respects:

- 13 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
14 class members, to work overtime without paying them proper
15 compensation in violation of California Labor Code sections 510 and
16 1198, and the applicable IWC Wage Order, as alleged herein;
- 17 (b) Failing to include all forms of remuneration in the regular rate of pay as
18 required by law for purposes of paying overtime wages and/or meal and
19 rest period premiums to Plaintiff and class members, in violation of
20 California Labor Code sections 226.7, 510, and 1198, and the applicable
21 IWC Wage Order, as alleged herein;
- 22 (c) Failing to pay at least minimum wage to Plaintiff and class members in
23 violation of California Labor Code sections 1182.12, 1194, 1197,
24 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
25 herein;
- 26 (d) Failing to provide all meal periods to Plaintiff and class members in
27 violation of California Labor Code sections 226.7, 512(a), 516, and
28 1198, and the applicable IWC Wage Order, as alleged herein;

- 1 (e) Failing to authorize and permit Plaintiff and class members to take all
2 rest periods in violation of California Labor Code sections 226.7, 516,
3 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 4 (f) Failing to provide Plaintiff and class members with accurate wage
5 statements and failing to maintain accurate payroll records in violation
6 of California Labor Code sections 226(a), 1174(d), and 1198, and the
7 applicable IWC Wage Order, as alleged herein;
- 8 (g) Failing timely to pay all earned wages to Plaintiff and class members in
9 violation of California Labor Code section 204, as alleged herein;
- 10 (h) Issuing instruments to Plaintiff and class members for the payment of
11 wages that were not payable in cash, on demand, without discount, and
12 with prior authorization, in violation of California Labor Code sections
13 212 and 213, as set forth below;
- 14 (i) Collecting or receiving wages already paid from Plaintiff and class
15 members in violation of California Labor Code sections 221 and 224, as
16 set forth below;
- 17 (j) Failing to pay the statutorily designated wage scale in violation of
18 California Labor Code section 223, as set forth below; and
- 19 (k) Failing to provide one day's rest in seven to Plaintiff and class members
20 in violation of California Labor Code sections 551 and 552, as set forth
21 below.

22 156. At all times relevant herein, California Labor Code section 212 prohibits
23 employers from issuing any instruments for the payment of wages unless such instruments are
24 negotiable and payable in cash, on demand, and without discount. California Labor Code
25 section 213 permits employers to pay employees via direct deposit so long as the employee
26 authorizes payment via direct deposit.

27 157. Under California law, employers are permitted to fulfill their wage payment
28 obligations to employees by using payroll debit cards, but only so long as the employee is

1 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v.*
2 *Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249,
3 *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards
4 Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied
5 heavily on:

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

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

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

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

30 159. Further, the DLSE notes that the Labor Code manifests:

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

1 be charged against the same account in which wages are
2 deposited.” (Emphases in original)

3 *DLSE opinion letter 2008.07.07.* The DLSE has also acknowledged that payroll service
4 providers “effectively act as *agents* of the client employers in discharging the employer’s
5 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the
6 Labor Code does not purport to regulate the specific arrangements between employers and
7 payroll service providers, both an employer and, under the express language in Labor Code
8 § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07-2.*

9 160. During the relevant time period, Defendants had an agreement with a payroll
10 service provider, Wisely, for the issuance of payroll debit cards to employees, including
11 Plaintiff and class members, to discharge their wage payment obligations to their employees.
12 On information and belief, Defendants had a practice and/or policy of automatically issuing
13 payroll debit cards to departing employees without giving them the option to elect their form
14 of payment for their final wages. For example, Plaintiff received her final wages on a payroll
15 debit card without a choice of an alternate method of payment, such as a written check.
16 Instead, Defendants automatically enrolled Plaintiff in their payroll debit card program for the
17 purpose of issuing Plaintiff’s final wages to her without prior, voluntary approval from
18 Plaintiff.

19 161. Moreover, under Defendants’ payroll debit card program, Plaintiff and class
20 members did not have easy access to the entirety of their wages without incurring a fee.
21 Plaintiff and class members were unable to withdraw their entire wages in at least one
22 transaction without incurring a fee, which resulted in a discount in their pay. For example,
23 Plaintiff was subjected to transaction fees when withdrawing her wages from an out-of-
24 network ATM. Thus, Defendants’ payroll debit card program was and continues to be
25 unlawful as it did not give Plaintiff and class members access to their entire wages without
26 discount and without delay.

27 162. California courts recognize a policy favoring the full and prompt payment of
28 wages to employees. Defendants’ payroll card program is inconsistent with this policy
because Defendants’ program is involuntary and denies Plaintiff and class members of easy

1 access to their wages. Thus, Defendants' company-wide payroll debit card program violates
2 California Labor Code sections 212 and 213.

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

8 164. During the relevant time period, Defendants unlawfully deducted a portion of
9 wages previously paid to Plaintiff and class members in violation of California Labor Code
10 section 221. On information and belief, Defendants systematically, and on a company-wide
11 basis, provided Plaintiff and class members with payroll debit cards as payment of their wages
12 and/or final wages. Under Defendants' payroll debit card program, Plaintiff and class
13 members were assessed various fees in connection with their use of the payroll debit cards.
14 For example, as described above, Plaintiff and class members were required to pay out-of-
15 network ATM withdrawal fees, in-network ATM fees from third parties, and/or other fees to
16 obtain and/or spend their earned and due wages. The fees charged to Plaintiff and class
17 members resulted in a discount of their wages.

18 165. Defendants' practice, which resulted in a discount of wages to employees, is
19 tantamount to taking deductions from Plaintiff's and class members' paychecks without their
20 written authorization and therefore constitutes an unlawful deduction of wages, in violation of
21 California Labor Code sections 221 and 224.

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

25 167. During the relevant time period, Defendants willfully and systematically issued
26 payroll debit cards to Plaintiff and class members that discounted their wages by charging
27 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
28 card program resulted in the payment of less than statutorily required wages to Plaintiff and

1 class members. Thus, Defendants paid Plaintiff and class members lower wages than those
2 they were entitled to while purporting that Plaintiff and class members were properly paid.

3 168. Defendants' failure to pay Plaintiff and class members the correct designated
4 wage, while purporting to pay legal wages, is a violation of California Labor Code section
5 223.

6 169. At all relevant times herein, California Labor Code section 551 provides that
7 every person employed in any occupation of labor is entitled to one day's rest in seven.
8 Additionally, California Labor Code section 552 prohibits employers from requiring
9 employees to work more than six consecutive days without a day of rest.

10 170. At all relevant times herein set forth, California Labor Code section 556
11 exempts an employer from the day-of-rest requirement when the total hours worked by an
12 employee do not exceed 30 hours in any week or six hours in any one day thereof.

13 171. During the relevant time period, on information and belief, Defendants
14 scheduled Plaintiff and class members to work six (6) or more hours per day and seven (7)
15 consecutive days in a workweek. Because Plaintiff and class members worked over 30 hours
16 per week and over six (6) hours per day in any one day in a workweek, they were not exempt
17 from the day-of-rest requirement. To the extent that Plaintiff and class members may have
18 signed purported waivers of their right to a day's rest in seven, such waivers are invalid.
19 Thus, Defendants willfully caused Plaintiff and class members to work more than six days in
20 seven, in violation of Labor Code sections 551 and 552.

21 172. As a result of the violations of California law herein described, Defendants
22 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
23 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
24 herein.

25 173. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
26 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
27 Defendants during a period that commences four years prior to the filing of the initial
28 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to

1 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
2 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

3 **TENTH CAUSE OF ACTION**

4 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**
5 **Unfair Business Practices**
6 **(Against all Defendants)**

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

9 175. Defendants are "persons" as defined by California Business & Professions
10 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
11 and/or associations.

12 176. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
13 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
14 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
15 seeks to enforce important rights affecting the public interest within the meaning of Code of
16 Civil Procedure section 1021.5.

17 177. Defendants' activities, namely Defendants' company-wide practice and/or
18 policy of not paying Plaintiff and class members all meal and rest period premiums due to
19 them under Labor Code section 226.7, deprived Plaintiff and class members of the
20 compensation guarantee and enhanced enforcement implemented by section 226.7. The
21 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
22 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*
23 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
24 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
25 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
26 unfair business practice in violation of California Business & Professions Code sections
27 17200, *et seq.* (*Id.*)

28 178. A violation of California Business & Professions Code sections 17200, *et seq.*

1 may be predicated on any unfair business practice. In the instant case, Defendants' policies
2 and practices have violated the spirit of California's meal and rest period laws and constitute
3 acts against the public policy behind these laws.

4 179. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
5 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
6 benefits implemented by section 226.7 withheld and retained by Defendants during a period
7 that commences four years prior to the filing of the initial complaint; a permanent injunction
8 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
9 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
10 Procedure section 1021.5 and other applicable laws; and an award of costs.

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

14 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
15 against Defendants, jointly and severally, as follows:

16 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
17 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
18 reserves the right to amend her prayer for relief to seek a different amount.

19 **Class Certification**

- 20 2. That this case be certified as a class action;
21 3. That Plaintiff be appointed as the representative of the Class and Subclass;
22 4. That counsel for Plaintiff be appointed as class counsel.

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

24 5. That the Court declare, adjudge, and decree that Defendants violated California
25 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
26 pay all overtime wages due to Plaintiff and class members;

27 6. For general unpaid wages at overtime wage rates and such general and special
28 damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

1 31. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 32. For injunctive relief pursuant to California Labor Code section 226(h);

4 33. For statutory penalties pursuant to California Labor Code section 226(e);

5 34. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

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

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

10 36. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
12 and/or meal and rest period premiums owed at the time of termination of the employment of
13 Plaintiff and other terminated class members;

14 37. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 38. For waiting time penalties according to proof pursuant to California Labor
17 Code section 203 for all employees who have left Defendants' employ;

18 39. For pre-judgment interest on any unpaid wages from the date such amounts
19 were due, or as otherwise provided by law;

20 40. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 41. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Seventh Cause of Action**

25 42. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
27 overtime wages, minimum wages, and/or meal and rest period premiums during their
28 employment;

1 43. For all actual, consequential and incidental losses and damages, according to
2 proof;

3 44. For statutory penalties according to proof pursuant to California Labor Code
4 section 210;

5 45. For pre-judgment interest on any unpaid wages from the date such amounts
6 were due, or as otherwise provided by law;

7 46. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

9 47. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Eighth Cause of Action**

12 48. That the Court declare, adjudge and decree that Defendants violated the
13 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
14 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing
15 to include all forms of remuneration in the regular rate of pay for purposes of paying overtime
16 wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by
17 failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by
18 failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
19 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements
20 and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages
21 upon termination); 204 (by failing to timely pay all earned wages during employment); 212
22 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by
23 collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than
24 required by statute); 246 (by failing to properly calculate sick leave pay); and 551 and 552 (by
25 failing to provide one day's rest in seven);

26 49. For civil penalties pursuant to the California Labor Code, including sections
27 210, 225.5, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California
28 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a),

1 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

2 50. For attorneys' fees and costs pursuant to California Labor Code section
3 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
4 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a),
5 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

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

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

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

10 53. That the Court declare, adjudge and decree that Defendants' conduct of failing
11 to provide Plaintiff and class members all overtime wages due to them; failing to include all
12 forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or
13 meal and rest period premiums to Plaintiff and class members; failing to provide Plaintiff and
14 class members all minimum wages due to them; failing to provide Plaintiff and class members
15 all meal periods; failing to authorize and permit Plaintiff and class members to take all rest
16 periods; failing to provide Plaintiff and class members accurate and complete wage
17 statements; failing to maintain accurate payroll records for Plaintiff and class members; failing
18 to timely pay Plaintiff and class members all earned wages during employment; failing to
19 provide access to wages upon demand, without discount, and with authorization; unlawfully
20 deducting a portion of wages previously paid; secretly paying a lower wage; and failing to
21 provide one day's rest in seven, constitutes an unlawful business practice in violation of
22 California Business and Professions Code sections 17200, *et seq.*;

23 54. For restitution of unpaid wages to Plaintiff and all class members and
24 prejudgment interest from the day such amounts were due and payable;

25 55. For the appointment of a receiver to receive, manage, and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code sections
28 17200, *et seq.*;

1 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5; and

3 57. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Tenth Cause of Action**

6 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
7 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
8 an unfair business practice in violation of California Business and Professions Code sections
9 17200, *et seq.*;

10 59. For restitution of the statutory benefits under section 226.7 unfairly withheld
11 from Plaintiff and class members and prejudgment interest from the day such amounts were
12 due and payable;

13 60. For the appointment of a receiver to receive, manage, and distribute any and all
14 funds disgorged from Defendants and determined to have been wrongfully acquired by
15 Defendants as a result of violations of California Business & Professions Code sections
16 17200, *et seq.*;

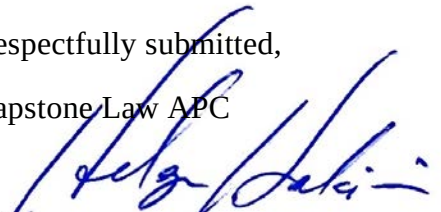
17 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Code of Civil Procedure section 1021.5;
19 For pre-judgment and post-judgment interest as provided by law; and

20 62. For such other and further relief as the Court may deem equitable and
21 appropriate.

22
23 Dated: May 2, 2024

Respectfully submitted,

Capstone Law APC

24
25
26 By: 

Orlando Villalba

Helga Hakimi

Joseph D. Parsons

27
28 Attorneys for Plaintiff Juanita Lopez

EXHIBIT “1”

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

February 22, 2024

VIA ONLINE SUBMISSION

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

Subject: *Juanita Lopez v. Covanta Projects, LLC, et al.*

Dear PAGA Administrator:

This office represents Juanita Lopez in connection with her claims under the California Labor Code. Ms. Lopez was an employee of COVANTA PROJECTS, LLC; COVANTA DELANO, INC.; COVANTA ENVIRONMENTAL SOLUTIONS, LLC; COVANTA ENVIRONMENTAL CARRIERS II, LLC; COVANTA LONG BEACH RENEWABLE ENERGY CORP.; COVANTA MENDOTA, LLC; and/or COVANTA STANISLAUS, INC. For the purpose of this letter, Ms. Lopez collectively refers to these entities as "COVANTA."

The employers may be contacted directly at the addresses below:

COVANTA PROJECTS, LLC
445 SOUTH STREET
MORRISTOWN, NJ 07960

COVANTA DELANO, INC.
445 SOUTH ST
MORRISTOWN, NJ 07960

COVANTA ENVIRONMENTAL
SOLUTIONS, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960-6475

COVANTA ENVIRONMENTAL
SOLUTIONS CARRIERS II, LLC
445 SOUTH STREET
MORRISTOWN, NJ 07960

COVANTA LONG BEACH
RENEWABLE ENERGY CORP.
445 SOUTH ST
MORRISTOWN, NJ 07960

COVANTA MENDOTA, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960

COVANTA STANISLAUS, INC.
445 SOUTH STREET
MORRISTOWN, NJ 07960

Ms. Lopez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Lopez seeks relief on behalf of herself, the State of

California, and other persons who are or were employed by COVANTA as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

COVANTA employed Ms. Lopez as an hourly paid, non-exempt employee from approximately July 2022 to October 2023. Ms. Lopez worked for COVANTA as an Auxiliary Operator out of its facility in Crows Landing, California. During her employment, Ms. Lopez typically worked twelve (12) hours per day and six (6) or more days per week. At the time Ms. Lopez’s employment with COVANTA ended, she earned \$31.42 per hour. Ms. Lopez’s primary job duties included, without limitation, operating forklifts and mobile cranes, moving ash, conducting checks on furnaces, and ensuring the proper functioning of equipment.

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

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

COVANTA PROJECTS, LLC and COVANTA ENVIRONMENTAL SOLUTIONS, LLC are Delaware limited liability companies; COVANTA ENVIRONMENTAL CARRIERS II, LLC is a Wisconsin limited liability company; COVANTA MENDOTA, LLC is a California limited liability company; COVANTA DELANO, INC. is a Delaware corporation; COVANTA LONG BEACH RENEWABLE ENERGY CORP. is a Delaware corporation; and COVANTA STANISLAUS, INC. is a California corporation. Together, they are a world leader in providing sustainable waste and energy solutions for municipalities and commercial businesses, and operate at least five (5) waste treatment facilities in California. Upon information and belief, COVANTA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Morristown, New Jersey, for all non-exempt, hourly paid employees working for COVANTA in California, including Ms. Lopez and other aggrieved employees. At all relevant times, COVANTA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Lopez and other aggrieved employees, regardless of their location or position.

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

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

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

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

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

First, during the relevant time period, COVANTA had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Lopez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime and/or double-time employees could accrue. This policy of limiting overtime, coupled with COVANTA’s understaffing and assigning heavy workloads (*see infra*), led Ms. Lopez and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, Ms. Lopez and other aggrieved employees were required to change into their uniforms and/or don personal protective equipment (“PPE”), such as reflective and flame-resistant shirts and pants, steel-toed boots, hard hats, and safety glasses on COVANTA’s premises. As another example, after clocking out at the end of their shifts, Ms. Lopez and other aggrieved employees were required to change out of their uniforms and/or doff PPE and drop them off in a designated area before they could go home for the day, which took at least three (3) minutes per day. However, COVANTA did not allow Ms. Lopez and other aggrieved employees to report all of the time spent donning and doffing their uniforms and/or PPE at the beginning and end of their shifts or during their meal periods, despite being on COVANTA’s premises and under COVANTA’s control. As a result, Ms. Lopez and other aggrieved employees were required to spend time donning and doffing their uniforms and/or PPE off-the-clock.

Second, COVANTA had, and continues to have, a company-wide policy of strictly staffing its locations while assigning heavy workloads, resulting in a failure to provide Ms. Lopez and other aggrieved employees with adequate meal period coverage. COVANTA also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Ms. Lopez and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Ms. Lopez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Lopez was required to complete and perform multiple, time-sensitive inspections of COVANTA’s facility to closely monitor equipment functionality, involving detailed checklists, on a daily basis, which caused her to work through her unpaid meal periods and have her meal periods cut short.

Additionally, COVANTA had a company-wide practice and/or policy of requiring that Ms. Lopez and other aggrieved employees carry and respond to company-issued radios at all times, including during meal periods. For example, Ms. Lopez would have her meal periods interrupted because she was required to answer calls from her supervisors on her company-issued radio and return to work immediately to assess an urgent situation with a malfunctioning machine. Thus, Ms. Lopez and other aggrieved employees worked through meal periods and/or had them interrupted to handle their assigned workloads

and responsibilities, and COVANTA did not pay Ms. Lopez and other aggrieved employees for the time they continued to perform tasks during meal periods.

Further, on information and belief, because COVANTA frowned upon employees accruing meal period penalties, COVANTA's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to limit meal penalties that would need to be paid by COVANTA. Thus, COVANTA did not record all hours worked during meal periods, and Ms. Lopez and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

For example, COVANTA paid Ms. Lopez and other aggrieved employees incentive pay and/or nondiscretionary bonuses, which were listed on Ms. Lopez's and other aggrieved employees' wage statements as "Signing Bonus" and "Bonus." During pay periods that Ms. Lopez and other aggrieved employees were paid overtime and/or double-time wages, COVANTA did not incorporate these payments into Ms. Lopez's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime and/or double-time hours worked. Specifically, COVANTA paid Ms. Lopez and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay for overtime wages, and during pay periods that Ms. Lopez and other aggrieved employees worked more than twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work, COVANTA paid Ms. Lopez and other aggrieved employees two (2) times their hourly rate of pay instead of two (2) times their regular rate of pay for double-time wages. COVANTA's failure to properly calculate the overtime and/or double-time rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Lopez and other aggrieved employees on a company-wide basis.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

As set forth above, as a result of COVANTA’s policy of limiting the amount of overtime and/or double time employees could accrue, COVANTA required Ms. Lopez and other aggrieved employees to perform work off-the-clock before and after their scheduled start and end-times. As stated, COVANTA required Ms. Lopez and other aggrieved employees to don and doff uniforms and/or PPE while off-the-clock, including when entering the premises before clocking in prior to a shift or when returning from a meal period and when exiting the premises after clocking out at the end of a shift or when leaving for a meal period. COVANTA failed to track all of this time Ms. Lopez and other aggrieved employees spent working off-the-clock, and thus, Ms. Lopez and other aggrieved employees received no compensation for this time.

Additionally, as set forth above, due to COVANTA’s policies and/or practices of understaffing while assigning heavy workloads, failing to schedule meal periods, and subsequent lack of meal period coverage, Ms. Lopez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, time for which they were not paid. Moreover, as also stated, COVANTA had a company-wide policy and/or practice of requiring that Ms. Lopez and other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. Further, on information and belief, to limit the meal penalties that COVANTA would otherwise owe, COVANTA pressured Ms. Lopez and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

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

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total

work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

First, as stated, COVANTA had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Ms. Lopez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, COVANTA had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Ms. Lopez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, as stated, COVANTA had a company-wide policy and/or practice of requiring that Ms. Lopez and other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As also stated, Ms. Lopez and other aggrieved employees had their meal periods cut short because they were required to don and doff their uniforms and/or PPE when entering the work premises to return from a meal period and/or when exiting the premises to leave for a meal period.

As a result, Ms. Lopez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Lopez was required to work straight through her meal periods due to the lack of coverage and had her meal periods interrupted by supervisors calling her on her company-issued radio and requiring she attend to an urgent situation. Additionally, Ms. Lopez sometimes took her meal periods late, after the fifth hour of work, due to the lack of coverage.

Second, as stated, on information and belief, because COVANTA frowned upon employees accruing meal period penalties, COVANTA's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period. For example, Ms. Lopez was required to clock out for her first meal period to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods.

Third, COVANTA did not provide Ms. Lopez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Lopez worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Ms. Lopez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. To the extent COVANTA required Ms. Lopez and other aggrieved employees to sign written "on-duty" meal period agreements, such agreements are invalid as the nature of the work performed by Ms. Lopez and other aggrieved employees and do not necessitate an "on-duty" meal period under California law.

Moreover, COVANTA had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. COVANTA took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Additionally, COVANTA's "California Non-Exempt Employee Meal Period Waiver Form" form requires employees provide one day's advanced written notice should they wish to revoke the waiver. COVANTA's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in advance in writing, discouraged and impeded Ms. Lopez and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That COVANTA required Ms. Lopez and other aggrieved employees to sign meal period waivers in advance (as opposed to on a specific work day) renders them invalid and unenforceable, because COVANTA's obligation to provide Ms. Lopez and other aggrieved employees with meal periods did not arise until COVANTA had employed them for a full five (5) hours.

At all times mentioned herein, COVANTA knew or should have known that as a result of its policies and practices, Ms. Lopez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. COVANTA further knew or should have known that it did not pay Ms. Lopez and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

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

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, COVANTA regularly failed to authorize and permit Ms. Lopez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, COVANTA's policies and/or practices of understaffing while assigning heavy workloads, and their requirement that employees carry a company-issued radio at all times, including during rest periods, prevented Ms. Lopez and other aggrieved employees from being relieved of all duty in order to take their rest periods. COVANTA also failed to schedule rest periods, which, coupled with COVANTA's failure to provide adequate rest period coverage, further led to Ms. Lopez and other aggrieved employees not being authorized and permitted to take compliant rest periods.

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

As a result, Ms. Lopez and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Ms. Lopez had to forego some of her rest periods in order to handle the heavy workload and due to the lack of coverage. When Ms. Lopez was able to take her rest periods, they were interrupted by COVANTA's management calling Ms. Lopez on her company-issued radio to discuss work-related matters.

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

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

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

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

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

Because COVANTA did not record the time Ms. Lopez and other aggrieved employees spent working off-the-clock, COVANTA did not list the correct amount of gross wages and net wages earned by Ms. Lopez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, COVANTA failed to accurately list the total number of hours worked by Ms. Lopez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the wage statements into hard copies at no expense to them.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, COVANTA failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep accurate records of work period and/or meal period start and end times for Ms. Lopez and other aggrieved employees, in violation of section 1198. Furthermore, in light of COVANTA’s failure to provide Ms. Lopez and other aggrieved employees with second 30-minute meal periods to which they were entitled, COVANTA kept no records of meal start and end times for second meal periods.

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

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

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

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

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

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

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, COVANTA has a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, COVANTA terminated Ms. Lopez's employment on or about October 30, 2023; however, COVANTA did not provide Ms. Lopez with her final wages until about November 3, 2023. Thus, COVANTA failed to pay Ms. Lopez her final wages immediately, in violation of California Labor Code section 201.

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

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

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

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

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

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

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

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

Further, the DLSE notes that the Labor Code manifests:

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

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

During the relevant time period, COVANTA had an agreement with a payroll service provider, Wisely, for the issuance of payroll cards to employees, including Ms. Lopez and other aggrieved employees, to discharge its wage payment obligations to its employees. On information and belief, COVANTA had a practice of and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Ms. Lopez received her final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, COVANTA automatically enrolled Ms. Lopez in its payroll debit card program for the purpose of issuing Ms. Lopez’s final wages to her without prior, voluntary approval from Ms. Lopez.

Moreover, under COVANTA’s payroll debit card program, Ms. Lopez and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. Ms. Lopez and other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, which resulted in a discount in their pay. For example, Ms. Lopez was subjected to transaction fees when withdrawing her wages from an out-of-network ATM. Thus, COVANTA’s payroll debit card program was and continues to be unlawful as it did not give Ms. Lopez and other aggrieved employees access to their entire wages without discount and without delay.

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

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

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

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

COVANTA's practice, which resulted in a discount of wages to employees, is tantamount to taking deductions from Ms. Lopez's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Ms. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

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

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

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

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

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

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires that employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Labor Code section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, on information and belief, COVANTA did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, COVANTA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, COVANTA failed to incorporate all remunerations, including incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, COVANTA failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, COVANTA paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

Moreover, during the relevant time period, COVANTA failed, on a company-wide basis, to provide Ms. Lopez and/or other aggrieved employees with written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them.

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

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

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, COVANTA scheduled Ms. Lopez and other aggrieved employees to work six (6) or more hours per day and seven (7) consecutive days in a workweek. Because Ms. Lopez and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. Lopez and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, COVANTA caused Ms. Lopez and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Lopez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Ms. Lopez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Lopez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against COVANTA for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 246, 551, 552, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

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

Best Regards,

A handwritten signature in dark ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: COVANTA PROJECTS, LLC (via U.S. Certified Mail); COVANTA DELANO, INC. (via U.S. Certified Mail); COVANTA ENVIRONMENTAL SOLUTIONS, LLC (via U.S. Certified Mail); COVANTA ENVIRONMENTAL CARRIERS II, LLC (via U.S. Certified Mail); COVANTA LONG BEACH RENEWABLE ENERGY CORP. (via U.S. Certified Mail); COVANTA MENDOTA, LLC (via U.S. Certified Mail); COVANTA STANISLAUS, INC. (via U.S. Certified Mail)

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

CERTIFIED MAIL
7022 2410 0000 2406 0385

COVANTA PROJECTS, LLC
445 SOUTH STREET
MORRISTOWN, NJ 07960

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■ Complete items 1, 2, and 3.
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1. **COVANTA PROJECTS, LLC**
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MORRISTOWN, NJ 07960

2. Article Number (Transfer from service label)
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COVANTA

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PS Form 3800, April 2015 PSN 7530-02-000-2004

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



7022 2410 0000 2406 0392

COVANTA DELANO, INC.
445 SOUTH ST
MORRISTOWN, NJ 07960

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A. Signature

☐ Agent
☐ Addressee

Received by (Printed Name)

C. Date of Delivery

COVANTA DELANO, INC.
445 SOUTH ST
MORRISTOWN, NJ 07960

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If YES, enter delivery address below: ☐ No



9590 9402 7690 2122 7189 28

3. Service Type

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- ☐ Collect on Delivery Restricted Delivery
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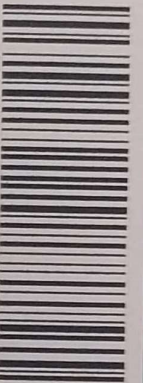
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☒ Return Receipt (hardcopy) \$
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445 SOUTH ST
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1875 Century Park, East, 1000
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COVANTA ENVIRONMENTAL
SOLUTIONS, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960-6475

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COVANTA
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COVANTA ENVIRONMENTAL
SOLUTIONS, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960-6475

9590 9402 7690 2122 7189 35

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A. Signature

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☐ Agent
☐ Addressee

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Service Type

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Domestic Return Receipt

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



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COVANTA ENVIRONMENTAL
SOLUTIONS CARRIERS II, LLC
445 SOUTH STREET
MORRISTOWN, NJ 07960

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SOLUTIONS CARRIERS II, LLC
445 SOUTH STREET
MORRISTOWN, NJ 07960



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- D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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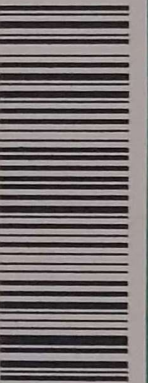
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SOLUTIONS CARRIERS II, LLC
445 SOUTH STREET
MORRISTOWN, NJ 07960

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Los Angeles, CA. 90067

7022 2410 0000 2406 0422



COVANTA LONG BEACH
RENEWABLE ENERGY CORP.
445 SOUTH ST
MORRISTOWN, NJ 07960

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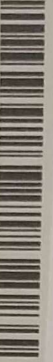
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☐ Addressee

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1. COVANTA LONG BEACH
RENEWABLE ENERGY CORP.
445 SOUTH ST
MORRISTOWN, NJ 07960



9590 9402 7690 2122 7189 59

2

7022 2410 0000 2406 0422

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COREY,
COVANTA
Postmark

COVANTA LONG BEACH
RENEWABLE ENERGY CORP.
445 SOUTH ST
MORRISTOWN, NJ 07960

PS

City

State

Zip

Postmark

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

7022 2410 0000 2406 0439



COVANTA MENDOTA, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960

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COVANTA MENDOTA, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960

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COVANTA MENDOTA, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960



9590 9402 7690 2122 7189 66

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A. Signature

X

☐ Agent
☐ Addressee

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3. Service Type

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875 Century Park, East, 1000
Los Angeles, CA. 90067

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COVANTA STANISLAUS, INC.
445 SOUTH STREET
MORRISTOWN, NJ 07960

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445 SOUTH STREET
MORRISTOWN, NJ 07960

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MORRISTOWN, NJ 07960

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☐ Agent☐ Addressee

Received by (Printed Name)

Kurt Marx

C. Date of Delivery

2-28-24

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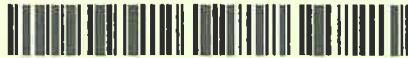
Domestic Return Receipt

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1.

COVANTA PROJECTS, LLC
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3. Service Type

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☐ Collect on Delivery Restricted Delivery

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☐ Signature Confirmation Restricted Delivery

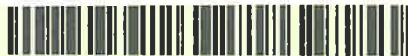
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Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

COVANTA ENVIRONMENTAL
SOLUTIONS, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960-6475



9590 9402 7690 2122 7189 35

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0408

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addresser

Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

COVANTA ENVIRONMENTAL
SOLUTIONS CARRIERS II, LLC
445 SOUTH STREET
MORRISTOWN, NJ 07960



9590 9402 7690 2122 7189 42

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0415

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature☐ Priority Mail Express®☐ Adult Signature Restricted Delivery☐ Registered Mail™☒ Certified Mail®☐ Registered Mail Restricted Delivery☐ Certified Mail Restricted Delivery☐ Signature Confirmation™☐ Collect on Delivery☐ Signature Confirmation Restricted Delivery☐ Collect on Delivery Restricted Delivery☐ Restricted Delivery

SENDER: COMPLETE THIS SECTION

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

1. COVANTA LONG BEACH
RENEWABLE ENERGY CORP.
445 SOUTH ST
MORRISTOWN, NJ 07960



9590 9402 7690 2122 7189 59

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0422

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature☐ Priority Mail Express®☐ Adult Signature Restricted Delivery☐ Registered Mail™☒ Certified Mail®☐ Registered Mail Restricted Delivery☐ Certified Mail Restricted Delivery☐ Signature Confirmation™☐ Collect on Delivery☐ Signature Confirmation Restricted Delivery☐ Collect on Delivery Restricted Delivery☐ Restricted Delivery

SENDER: COMPLETE THIS SECTION

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

COVANTA MENDOTA, LLC
445 SOUTH ST
MORRISTOWN, NJ 07960



9590 9402 7690 2122 7189 66

2.

7022 2410 0000 2406 0439

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Delivery Restricted Delivery

Restricted Delivery

(over \$500)

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

COVANTA STANISLAUS, INC.
445 SOUTH STREET
MORRISTOWN, NJ 07960



9590 9402 7690 2122 7189 73

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0446

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2/18/21

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

|| Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

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

On **May 2, 2024**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

CT Corporation System
330 N Brand Blvd.
Glendale, CA 91203

Registered Agent for Defendant:

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

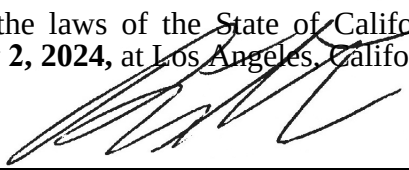
☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 2, 2024**, at Los Angeles, California.

Riley McIntire
Type/Print Name


Signature