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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN JOAQUIN

12 YASMIN MALDONADO ZEPEDA,
13 individually, and on behalf of other
14 members of the general public similarly
15 situated, and as an aggrieved employee
16 pursuant to the Private Attorneys General
17 Act ("PAGA"),

16 Plaintiff,

17 vs.

18 CHIRO, INC., a California corporation; and
19 DOES 1 through 10, inclusive,

20 Defendants.

Case No.: STK-CV-UOE-2024-0000575

**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 Yasmin Maldonado Zepeda, individually and on behalf of all other members
2 of the public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, 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 **THE PARTIES**

8 4. Plaintiff Yasmin Maldonado Zepeda is a resident of Modesto, in Stanislaus
9 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee
10 from approximately May 2022 to May 2023. Plaintiff worked for Defendants as a Roamer
11 and Floor Technician, assigned to work on-site at Save Mart and FoodMaxx grocery store
12 locations in Ripon, Modesto, Riverbank, Porterville, Ceres, Patterson, and Oakdale,
13 California. During her employment, Plaintiff typically worked six (6) to eight (8) hours or
14 more per day and five (5) days or more per week. Plaintiff's primary job duties included,
15 without limitation, collecting and disposing of garbage, sweeping and cleaning, and operating
16 a floor polisher machine.

17 5. CHIRO, INC. was and is, upon information and belief, a California corporation,
18 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
19 this county and the State of California.

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

24 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
25 were the partners, agents, owners, or managers of CHIRO, INC. at all relevant times.

26 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, CHIRO, INC. and/or
28 DOES 1 through 10 (collectively, "Defendants" or "CHIRO"), each acting as the agent,

1 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
2 Defendants and was acting within the course and scope of such agency, employment, joint
3 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
4 and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

12 **GENERAL ALLEGATIONS**

13 11. Defendants are providers of commercial cleaning services, such as new
14 construction/remodel cleanup, sanitation services, janitorial equipment repair, and sales floor
15 cleaning under the business name "Mr. Clean Maintenance Systems." Upon information and
16 belief, Defendants maintain a single, centralized Human Resources ("HR") department at their
17 company headquarters in San Bernardino, California, which is responsible for the recruiting
18 and hiring of new employees, and communicating and implementing Defendants' company-
19 wide policies, including timekeeping policies and meal and rest period policies, to employees
20 throughout California.

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

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1 13. Upon information and belief, Defendants maintain a centralized Payroll
2 department at their company headquarters in San Bernardino, California which processes
3 payroll for all non-exempt, hourly paid employees working for Defendants at their various
4 locations and jobsites in California, including Plaintiff and class members. Based upon
5 information and belief, Defendants issue the same formatted wage statements to all non-
6 exempt, hourly paid employees in California, irrespective of their work locations. Upon
7 information and belief, Defendants process payroll for departing employees in the same
8 manner throughout the State of California, regardless of the manner in which each employee's
9 employment ends.

10 14. Defendants continue to employ non-exempt or hourly paid employees in
11 California.

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

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

18 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive certain wages for
20 overtime compensation and that they were not receiving certain wages for overtime
21 compensation.

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

27 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to meal periods in

1 accordance with the California Labor Code and applicable IWC Wage Order or payment of
2 one (1) additional hour of pay at their regular rates of pay when they were not provided with
3 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
4 were not provided with all meal periods or payment of one (1) additional hour of pay at their
5 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
6 period.

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

15 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive complete and
17 accurate wage statements in accordance with California law. In violation of the California
18 Labor Code, Plaintiff and class members were not provided complete and accurate wage
19 statements.

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

24 23. 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 all
26 wages earned upon termination of employment. In violation of the California Labor Code,
27 Plaintiff and class members did not receive payment of all wages due, including, but not
28 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within

1 permissible time periods.

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

7 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive itemized wage
9 statements or separate written statements showing the amount of supplemental paid sick leave.

10 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants knew or should have known that they had a duty to compensate
12 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
13 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
14 falsely represented to Plaintiff and class members that they were properly denied wages, all in
15 order to increase Defendants' profits.

16 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

27 29. Plaintiff and other current and former employees of Defendants are "aggrieved
28 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current

1 or former employees and one or more of the alleged violations were committed against them.

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

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

10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(a) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).

13 (c) The LWDA shall notify the employer and the aggrieved employee or
14 representative by certified mail that it does not intend to investigate the
15 alleged violation ("LWDA Notice") within sixty (60) calendar days of
16 the postmark date of the aggrieved employee's notice. Upon receipt of
17 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
18 (65) calendar days of the postmark date of the aggrieved employee's
19 notice, the aggrieved employee may commence a civil action pursuant
20 to California Labor Code section 2699 to recover civil penalties.

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

25 (a) The aggrieved employee or representative shall give written notice by
26 online filing with the LWDA and by certified mail to the employer of
27 the specific provisions of the California Labor Code alleged to have
28 been violated (other than those listed in Section 2699.5), including the

1 facts and theories to support the alleged violation.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(c) and any employer response to that notice shall be
4 accompanied by a filing fee of seventy-five dollars (\$75).

5 (c) The employer may cure the alleged violation within thirty-three (33)
6 calendar days of the postmark date of the notice sent by the aggrieved
7 employee or representative. The employer shall give written notice
8 within that period of time by certified mail to the aggrieved employee or
9 representative and by online filing with the LWDA if the alleged
10 violation is cured, including a description of actions taken, and no civil
11 action pursuant to Section 2699 may commence. If the alleged violation
12 is not cured within the 33-day period, the aggrieved employee may
13 commence a civil action pursuant to Section 2699.

14 32. On February 12, 2024, Plaintiff provided written notice by online filing to the
15 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
16 Code alleged to have been violated, including facts and theories to support the alleged
17 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
18 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
19 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
20 Plaintiff PAGA Case Number LWDA-CM-1010620-24. A true and correct copy of Plaintiff's
21 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

25 34. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
28 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

35. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

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

38. 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, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

CLASS ACTION ALLEGATIONS

39. 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.

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

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

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

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

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

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

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

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

- 14 (a) Whether Defendants required Plaintiff and class members to work over
15 eight (8) hours per day, over twelve (12) hours per day, or over forty
16 (40) hours per week and failed to pay all legally required overtime
17 compensation to Plaintiff and class members;
- 18 (b) Whether Defendants failed to pay Plaintiff and class members at least
19 minimum wages for all hours worked;
- 20 (c) Whether Defendants failed to provide Plaintiff and class members with
21 meal periods;
- 22 (d) Whether Defendants failed to authorize and permit Plaintiff and class
23 members to take rest periods;
- 24 (e) Whether Defendants provided Plaintiff and class members with
25 complete and accurate wage statements as required by California Labor
26 Code section 226(a);
- 27 (f) Whether Defendants maintained accurate payroll records as required by
28 California Labor Code section 1174(d);

- 1 (g) Whether Defendants failed to pay earned overtime wages, minimum
2 wages, and/or meal and rest period premiums due to Plaintiff and class
3 members upon their discharge;
- 4 (h) Whether Defendants failed timely to pay overtime wages, minimum
5 wages, and/or meal and rest period premiums due to Plaintiff and class
6 members during their employment;
- 7 (i) Whether Defendants failed to provide Plaintiff and class members with
8 written notice of supplemental paid sick leave;
- 9 (j) Whether Defendants engaged in unlawful and unfair business practices
10 in violation of California Business & Professions Code sections 17200,
11 *et seq.*; and
- 12 (k) The appropriate amount of damages, restitution, or monetary penalties
13 resulting from Defendants' violations of California law.

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

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

herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

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

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

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

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

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

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

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

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

26 53. During the relevant time period, Defendants willfully failed to pay all overtime
27 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
28 class members were not paid overtime premiums for all of the hours they worked in excess of

1 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
2 hours in a week, because all hours worked were not recorded.

3 54. First, during the relevant time period, Defendants had, and continue to have, a
4 company-wide policy and/or practice of discouraging and impeding Plaintiff and class
5 members from recording hours worked that were outside of their scheduled shifts in order to
6 limit the amount of overtime employees could accrue. On information and belief, this
7 limitation on overtime accrual was based on a company-wide policy of staffing jobsite
8 locations strictly based on the labor hours or labor budget set by corporate. This policy of
9 limiting overtime, coupled with Defendants' understaffing and assignment of heavy
10 workloads (*see infra*), led Plaintiff to work off-the-clock before and after her scheduled shift
11 times.

12 55. For example, due to Defendants' practice of scheduling shifts outside of
13 daytime business hours, Plaintiff and class members were required to wait to be let inside their
14 assigned jobsite before being able to clock in. For instance, about once per week, after
15 reporting to work on time, Plaintiff was forced to wait for up to 30 minutes until a security
16 guard or keyholder employee became available, before being able to enter the jobsite and
17 clock in, because there was no one available to open the doors for her. Similarly, after
18 clocking out at the end of their shifts, Plaintiff and class members were required to wait for a
19 security guard or keyholder employee to become available before they could leave the jobsite.
20 Specifically, Plaintiff would often clock out at her scheduled shift-end time, and then have
21 wait up to 10 minutes until a security guard or grocery store night shift manager became
22 available to let her out, before being able to leave the premises. As a further example,
23 Plaintiff and class members were required to respond to phone communications from
24 management before and after their shifts or on their days off. For instance, Plaintiff was
25 required to answer work-related phone calls and text messages from her supervisors, who
26 would instruct her on specific areas of the jobsite to focus on, which could take up to 20
27 minutes, time for which she was not paid. This off-the-clock work could have been recorded
28 by Defendants, but they refused to do so to avoid payment of additional wages to Plaintiff and

1 class members. Thus, Defendants failed to track this time spent working off-the-clock before
2 and after their scheduled shifts, and Plaintiff and class members received no compensation for
3 this time they remained under Defendants' control.

4 56. Second, upon information and belief, because Defendants frowned upon
5 employees accruing meal period penalties, Defendants pressured employees who had signed
6 invalid meal period waivers (*see infra*) to clock out before they had worked six (6) hours in a
7 day, in order to limit their eligibility for meal periods they otherwise would have received. As
8 stated, Defendants required Plaintiff to clock out at the end of her scheduled shift and continue
9 working to complete tasks before she could leave for the day. Thus, Plaintiff and class
10 members were required to perform their assigned tasks off-the-clock because Defendants
11 wanted to avoid paying penalties for missed meal periods.

12 57. Third, during the relevant time period, Defendants had, and continue to have, a
13 company-wide policy and/or practice of strictly staffing their jobsites based on the labor hours
14 allocated by each location's labor or payroll budget set by the corporate office. Defendants'
15 use of a labor budget resulted in chronic understaffing, such that there were too few
16 employees on duty to handle the heavy workload and provide uninterrupted meal period
17 coverage. Also, Defendants have systematically, and on a company-wide basis, understaffed
18 their jobsites by adopting a single-staffing model for some shifts, whereby only one (1)
19 employee was scheduled to work at certain times, thereby failing to provide adequate meal
20 period coverage to permit those employees to take compliant meal periods. Defendants also
21 failed to schedule meal periods, which further caused Plaintiff and class members to not be
22 relieved of their duties for compliant meal periods. As a result, Plaintiff and class members
23 were not afforded uninterrupted thirty (30) minute meal periods during shifts in which they
24 were entitled to receive meal periods.

25 58. Further, Defendants maintained a company-wide on-premises meal period
26 policy, which mandated that Plaintiff and class members sometimes remain on the jobsite
27 premises during their meal periods. Because Plaintiff and class members were restricted from
28 leaving the work premises during meal periods, they were denied the ability to use their meal

1 periods freely for their own purposes. For example, Plaintiff was unable to run personal
2 errands or pick up food at a restaurant because she was unable to leave the work premises.
3 Thus, Defendants effectively maintained control over Plaintiff and class members during their
4 meal periods. Consequently, Plaintiff and class members worked through meal periods and/or
5 had meal periods cut short or interrupted in order to handle their workloads and adhere to
6 Defendants' practices and/or policies. Defendants did not compensate Plaintiff and class
7 members for the time they spent working off the clock during meal periods.

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

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

21 **SECOND CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 23 **Minimum Wages** 24 **(Against all Defendants)**

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

27 62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
28 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the

1 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
2 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the
3 time during which an employee is subject to the control of an employer, and includes all the
4 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
5 Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

6 63. As set forth above, as a result of Defendants’ policy of limiting the amount of
7 overtime employees could accrue, Defendants required Plaintiff and class members to perform
8 various work-related tasks off-the-clock outside of their scheduled shifts, including waiting to
9 be let inside Defendants’ jobsites to clock in, waiting for a security guard to let them out of
10 their jobsites after clocking out, and answering phone calls and texts messages from
11 Defendants. Defendants failed to track this time Plaintiff and class members spent working
12 off-the-clock, and Plaintiff and class members received no compensation for this time.

13 64. Additionally, as stated above, on information and belief, in order to limit the
14 meal penalties that Defendants would otherwise owe, Defendants pressured Plaintiff and class
15 members to clock out before they worked six (6) hours in day to limit their eligibility for meal
16 periods, but required them to continue working, time for which they were not paid.
17 Additionally, as stated above, due to Defendants’ uniform practices and/or policies of utilizing
18 labor budgets, understaffing and/or single-staffing while assigning heavy workloads, failing to
19 schedule meal periods, and requiring that Plaintiff and class members remain on the jobsite
20 premises during meal periods, Plaintiff and class members were required to work off-the-
21 clock during meal periods.

22 65. Defendants did not pay minimum wages for all hours worked by Plaintiff and
23 class members. To the extent that these off-the-clock hours did not qualify for overtime
24 premium payment, Defendants did not pay at least minimum wages for those hours worked
25 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
26 1198.

27 66. Defendants’ failure to pay Plaintiff and class members minimum wages violates
28 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to

1 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
2 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
3 interest thereon.

4 **THIRD CAUSE OF ACTION**

5 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period**

6 **Violations**

7 **(Against all Defendants)**

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

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

17 69. At all relevant times herein set forth, California Labor Code sections 226.7,
18 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
19 meal period mandated by an applicable order of the IWC.

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

27 71. As stated, Defendants had, and continue to have, a company-wide policy and/or
28 practice of strictly staffing their jobsites based on the labor hours allocated by each location's

labor or payroll budget set by the corporate office. Defendants' use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload and provide uninterrupted meal period coverage. Also, as stated, Defendants systematically, and on a company-wide basis, understaffed their locations by adopting a single-staffing model for certain shifts, pursuant to their labor budget practices, which resulted in a lack of meal period coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, as stated, Defendants maintained and implemented a company-wide practice of failing to schedule meal periods, which further caused Plaintiff and class members to not be relieved of their duties for compliant meal periods.

72. Furthermore, as stated, Defendants maintained a company-wide on-premises meal period policy, which mandated that Plaintiff and class members sometimes remain on the jobsite premises during their meal periods. Because Plaintiff and class members were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff and class members during meal periods.

73. As a result, Plaintiff and class members were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, according to Plaintiff's time records, on May 17, 2022, she clocked in at the start of her shift at 8:30 p.m. and clocked out at the end of her shift at 3:29 a.m., working a total six (6) hours and 59 minutes, without clocking out for a meal period. As a further example, approximately once per month, Plaintiff could not take her meal periods until more than seven (7) hours into her shifts. Plaintiff and class members did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

74. Moreover, Defendants had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. Defendants took the position that non-exempt, hourly paid employees had waived their rights to first meal

1 periods for the entirety of their employment and, on that basis, did not provide them with all
2 meal periods to which they were entitled. Moreover, Defendants’ “Acuerdo de Renuncia Al
3 Periodo De Comida (Para Dias Laborales Que No Duran Mas De 6 Horas)” form requires
4 employees provide written notice should they wish to revoke the waiver. Defendants’
5 presumption that meal periods would not be provided for shifts in excess of five (5) hours but
6 less than six (6) hours, due to blanket meal period waivers signed at or near the time of hire,
7 and imposition on employees to revoke the waivers in writing, discouraged and impeded
8 Plaintiff and class members from taking all meal periods to which they were entitled.

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

13 [A]fter the meal break obligation is triggered . . . an employer is put to a
14 choice: it must (1) afford an off-duty meal period; (2) consent to a
15 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
16 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.

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

22 76. At all times mentioned herein, Defendants knew or should have known that as a
23 result of their policies, Plaintiff and class members were prevented from being relieved of all
24 duties and required to perform some of their assigned duties during meal periods. Defendants
25 further knew or should have known that they did not pay Plaintiff and class members all meal
26 period premiums when meal periods were late, interrupted, shortened, and/or missed. As
27 stated, on information and belief, because Defendants frowned upon employees accruing meal
28 period penalties, Defendants’ management pressured Plaintiff and class members who had

1 signed invalid meal period waivers (*see supra*) to clock out before they had worked six (6)
2 hours in a day and continue working to limit their eligibility for meal periods, in order to
3 strictly limit the meal penalties that would need to be paid by Defendants. Thus, Defendants
4 failed to provide Plaintiff and class members with compliant, 30-minute meal periods
5 altogether when they were scheduled for six-hour shifts.

6 77. Furthermore, Defendants engaged in a company-wide practice and/or policy of
7 not paying all meal period premiums owed when compliant meal periods are not provided.
8 Because of this practice and/or policy, Plaintiff and class members have not received premium
9 pay for missed, late, and interrupted meal periods.

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

14 **FOURTH CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 16 **(Against all Defendants)**

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

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

22 81. At all relevant times, the applicable IWC Wage Order provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and that the "rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof" unless the total daily work time is less than three and one-half
27 (3 ½) hours.

28 ///

1 82. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to authorize and permit rest
4 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
5 employer must “relinquish any control over how employees spend their break time, and
6 relieve their employees of all duties—including the obligation that an employee remain on
7 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
8 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
9 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
10 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
11 required rest period was not authorized and permitted.

12 83. During the relevant time period, Defendants regularly failed to authorize and
13 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
14 period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or
15 practices including labor budgeting, understaffing and/or single-staffing, and assigning heavy
16 workloads, prevented Plaintiff and class members from being relieved of all duty to take their
17 rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’
18 failure to provide adequate rest period coverage, further led to Plaintiff and class members not
19 being authorized and permitted to take compliant rest periods.

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

27 85. As a result of Defendants’ practices and policies, Plaintiff and class members
28 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without

1 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
2 to forgo her rest periods altogether, in order to handle the heavy workload and due to the lack
3 of coverage.

4 86. Defendants have also engaged in a systematic, company-wide practice and/or
5 policy of not paying rest period premiums owed when rest periods are not authorized and
6 permitted. Because of this practice and/or policy, Plaintiff and class members have not
7 received premium pay for all missed rest periods.

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

13 **FIFTH CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 15 **Statements and Failure to Maintain Accurate Payroll Records** 16 **(Against all Defendants)**

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

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

24 90. At all relevant times, Defendants have knowingly and intentionally provided
25 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
26 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
27 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
28 applicable hourly rates in effect during the pay period, including rates of pay for overtime

wages, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

93. 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” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members 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.

94. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Plaintiff and Subclass members, in violation of section 1198.

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

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination
(Against all Defendants)

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

97. At all times relevant herein set forth, 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.

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1 98. On information and belief, Defendants have a company-wide practice and/or
2 policy of paying departing employees their final wages late, instead of adhering to the time
3 requirements set forth in Labor Code sections 201 and 202. For example, Defendants
4 terminated Plaintiff's employment on or about May 16, 2023. However, on information and
5 belief, Defendants did not provide her with all of her final pay until May 18, 2023. Thus,
6 Defendants failed to pay Plaintiff her final wages immediately, in violation of California
7 Labor Code section 201.

8 99. Additionally, Defendants willfully failed to pay Plaintiff and class members
9 who are no longer employed by Defendants the earned and unpaid wages set forth above,
10 including but not limited to, overtime wages, minimum wages, and/or meal and rest period
11 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving
12 Defendants' employ.

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

19 **SEVENTH CAUSE OF ACTION**

20 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
21 **Employment**
22 **(Against all Defendants)**

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

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

28 ///

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

104. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

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

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

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

EIGHTH CAUSE OF ACTION

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

(Against all Defendants)

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

1 109. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
3 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
4 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits
5 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
6 Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

- 9 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
10 Wage Order for Defendants’ failure to compensate Plaintiff and other
11 aggrieved employees with all required overtime pay, as alleged herein;
- 12 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
13 1198, and the applicable IWC Wage Order for Defendants’ failure to
14 compensate Plaintiff and other aggrieved employees with at least
15 minimum wages for all hours worked, as alleged herein;
- 16 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
17 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
18 and other aggrieved employees with meal periods, as alleged herein;
- 19 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
20 applicable IWC Wage Order for Defendants’ failure to authorize and
21 permit Plaintiff and other aggrieved employees to take rest periods, as
22 alleged herein;
- 23 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
24 IWC Wage Order for failure to provide accurate and complete wage
25 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 26 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
27 IWC Wage Order for failure to maintain payroll records, as alleged
28 herein;

1 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
2 earned wages upon termination, as alleged herein; and

3 (h) Violation of Labor Code section 204 for failure to pay all earned wages
4 during employment, as alleged herein.

5 111. Therefore, Plaintiff and other aggrieved employees are entitled to recover civil
6 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **NINTH CAUSE OF ACTION**

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

9 **Unlawful Business Practices**

10 **(Against all Defendants)**

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

13 113. Defendants are “persons” as defined by California Business & Professions
14 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
15 and/or associations.

16 114. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
17 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
18 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
19 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of Code of Civil Procedure section 1021.5.

21 115. Defendants’ activities, as alleged herein, are violations of California law, and
22 constitute unlawful business acts and practices in violation of California Business &
23 Professions Code sections 17200, *et seq.*

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

27 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
28 class members, to work overtime without paying them proper

1 compensation in violation of California Labor Code sections 510 and
2 1198, and the applicable IWC Wage Order, as alleged herein;

3 (b) Failing to pay at least minimum wage to Plaintiff and class members in
4 violation of California Labor Code sections 1182.12, 1194, 1197,
5 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
6 herein;

7 (c) Failing to provide all meal periods to Plaintiff and class members in
8 violation of California Labor Code sections 226.7, 512(a), 516, and
9 1198, and the applicable IWC Wage Order, as alleged herein;

10 (d) Failing to authorize and permit Plaintiff and class members to take all
11 rest periods in violation of California Labor Code sections 226.7, 516,
12 and 1198, and the applicable IWC Wage Order, as alleged herein;

13 (e) Failing to provide Plaintiff and class members with accurate wage
14 statements and failing to maintain accurate payroll records in violation
15 of California Labor Code sections 226(a), 1174(d), and 1198, and the
16 applicable IWC Wage Order, as alleged herein;

17 (f) Failing timely to pay all earned wages to Plaintiff and class members in
18 violation of California Labor Code section 204, as alleged herein; and

19 (g) Failing to provide written notice of supplemental paid sick leave
20 benefits in violation of California Labor Code section 248.6(d), as set
21 forth below.

22 117. At all relevant times herein, California Labor Code section 248.6 provides
23 covered employees with COVID-19 supplemental paid sick leave. Effective through
24 December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid
25 sick leave shall be set forth separately from paid sick days and that an “employer shall provide
26 an employee with written notice that sets forth the amount of COVID-19 supplemental paid
27 sick leave that the employee has used through the pay period in which it was due to be paid on
28 either the employee’s itemized wage statement . . . or in a separate written statement provided

1 on the designated pay date with the employee's payment of wages. The employer shall list
2 zero hours used if a worker has not used any COVID-19 supplemental paid sick leave."

3 118. During the relevant time period, Defendants failed, on a company-wide basis,
4 to provide Plaintiff and class members with written notice on all wage statements that listed
5 the amount of COVID-19 supplemental paid sick leave used by them.

6 119. Defendants' systematic failure to provide written notice of COVID-19
7 supplemental paid sick leave benefits to Plaintiff and class members is in violation of Labor
8 Code section 248.6(d).

9 120. As a result of the violations of California law herein described, Defendants
10 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
11 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
12 herein.

13 121. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
14 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
15 Defendants during a period that commences four years prior to the filing of the initial
16 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
17 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
18 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

19 **TENTH CAUSE OF ACTION**

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

21 **Unfair Business Practices**

22 **(Against all Defendants)**

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

25 123. Defendants are "persons" as defined by California Business & Professions
26 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
27 and/or associations.

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

6 125. Defendants’ activities, namely Defendants’ company-wide practice and/or
7 policy of not paying Plaintiff and class members all meal and rest period premiums due to
8 them under Labor Code section 226.7, deprived Plaintiff and class members of the
9 compensation guarantee and enhanced enforcement implemented by section 226.7. The
10 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
11 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
12 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
13 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
14 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
15 unfair business practice in violation of California Business & Professions Code sections
16 17200, *et seq.* (*Id.*)

17 126. A violation of California Business & Professions Code sections 17200, *et seq.*
18 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
19 and practices have violated the spirit of California’s meal and rest period laws and constitute
20 acts against the public policy behind these laws.

21 127. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
22 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
23 benefits implemented by section 226.7 withheld and retained by Defendants during a period
24 that commences four years prior to the filing of the initial complaint; a permanent injunction
25 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
26 Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil
27 Procedure section 1021.5 and other applicable laws; and an award of costs.

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1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

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

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

9 **Class Certification**

10 2. That this case be certified as a class action;

11 3. That Plaintiff be appointed as the representative of the Class and Subclass;

12 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

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

25 **As to the Second Cause of Action**

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

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

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

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

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

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

10 **As to the Third Cause of Action**

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

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

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

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

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

22 21. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

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

26 **As to the Fourth Cause of Action**

27 23. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiff and class members to take all rest periods;

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

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

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

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

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

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

14 **As to the Fifth Cause of Action**

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

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

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

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

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

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

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

4 48. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
6 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
7 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
8 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
9 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
10 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
11 earned wages upon termination); and 204 (by failing to timely pay all earned wages during
12 employment);

13 49. For civil penalties pursuant to the California Labor Code, including sections
14 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
15 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
16 and 1198;

17 50. For attorneys' fees and costs pursuant to California Labor Code section
18 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
19 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
20 1197, 1197.1, and 1198;

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

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

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

25 53. That the Court declare, adjudge and decree that Defendants' conduct of failing
26 to provide Plaintiff and class members all overtime wages due to them, failing to provide
27 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
28 class members all meal periods, failing to authorize and permit Plaintiff and class members to

1 take all rest periods, failing to provide Plaintiff and class members accurate and complete
2 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
3 failing to timely pay Plaintiff and class members all earned wages during employment, and
4 failing to provide written notice of supplemental paid sick leave, constitutes an unlawful
5 business practice in violation of California Business and Professions Code sections 17200, *et*
6 *seq.*;

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

9 55. For the appointment of a receiver to receive, manage, and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections
12 17200, *et seq.*;

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

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

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

18 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
19 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
20 an unfair business practice in violation of California Business and Professions Code sections
21 17200, *et seq.*;

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

25 60. 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 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 62. For pre-judgment and post-judgment interest as provided by law; and

4 63. For such other and further relief as the Court may deem equitable and
5 appropriate.

6
7 Dated: April 18, 2024

Respectfully submitted,

8 Capstone Law APC

9
10 By: 

Bevin Allen Pike

Daniel S. Jonathan

Trisha K. Monesi

Shealene P. Mancuso

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13 Attorneys for Plaintiff Yasmin Maldonado
14 Zepeda
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EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

February 12, 2024

VIA ONLINE SUBMISSION

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

Subject: *Yasmin Maldonado Zepeda v. Chiro, Inc.*

Dear PAGA Administrator:

This office represents Yasmin Maldonado Zepeda in connection with her claims under the California Labor Code. Ms. Maldonado Zepeda was an employee of CHIRO, INC. ("CHIRO").

The employer may be contacted directly at the addresses below:

CHIRO, INC.
1834 BUSINESS CENTER DRIVE
SAN BERNARDINO, CA 92408

CHIRO, INC.
PO BOX 31
COLTON, CA 92324

Ms. Maldonado Zepeda 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. Maldonado Zepeda seeks relief on behalf of herself, the State of California, and other persons who are or were employed by CHIRO 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.

CHIRO employed Ms. Maldonado Zepeda as an hourly paid, non-exempt employee from approximately May 2022 to May 2023. Ms. Maldonado Zepeda worked for CHIRO as a Roamer and Floor Technician, assigned to work on-site at Save Mart and FoodMaxx grocery store locations in Ripon, Modesto, Riverbank, Porterville, Ceres, Patterson, and Oakdale, California. During her employment, Ms. Maldonado Zepeda typically worked six (6) to eight (8) hours or more per day and five (5) days or more per week. At the time her employment ended, Ms. Maldonado Zepeda was compensated approximately \$16.50 per hour. Her primary job duties included, without limitation, collecting and disposing of garbage, sweeping and cleaning, and operating a floor polisher machine.

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

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

CHIRO, INC. is a California corporation that provides commercial cleaning services, such as new construction/remodel cleanup, sanitation services, janitorial equipment repair, and sales floor cleaning under the business name “Mr. Clean Maintenance Systems.” Upon information and belief, CHIRO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Bernardino, California, for all non-exempt, hourly paid employees working for CHIRO in California, including Ms. Maldonado Zepeda and other aggrieved employees. At all relevant times, CHIRO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Maldonado Zepeda and other aggrieved employees, regardless of their location or position.

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

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

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

CHIRO willfully failed to pay all overtime wages owed to Ms. Maldonado Zepeda and other aggrieved employees. During the relevant time period, Ms. Maldonado Zepeda and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8)

¹ These facts, theories, and claims are based on Ms. Maldonado Zepeda’s experience and counsel’s review of those records currently available relating to Ms. Maldonado Zepeda’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. Maldonado Zepeda 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.

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, CHIRO had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Maldonado Zepeda and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing jobsite locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with CHIRO's understaffing and assignment of heavy workloads (*see infra*), led Ms. Maldonado Zepeda to work off-the-clock before and after her scheduled shift times.

For example, due to CHIRO's practice of scheduling shifts outside of daytime business hours, Ms. Maldonado Zepeda and other aggrieved employees were required to wait to be let inside their assigned jobsite before being able to clock in. For instance, about once per week, after reporting to work on time, Ms. Maldonado Zepeda was forced to wait for up to 30 minutes until a security guard or keyholder employee became available, before being able to enter the jobsite and clock in, because there was no one available to open the doors for her. Similarly, after clocking out at the end of their shifts, Ms. Maldonado Zepeda and other aggrieved employees were required to wait for a security guard or keyholder employee to become available before they could leave the jobsite. Specifically, Ms. Maldonado Zepeda would often clock out at her scheduled shift-end time, and then have wait up to 10 minutes until a security guard or grocery store night shift manager became available to let her out, before being able to leave the premises. As a further example, Ms. Maldonado Zepeda and other aggrieved employees were required to respond to phone communications from management before and after their shifts or on their days off. For instance, Ms. Maldonado Zepeda was required to answer work-related phone calls and text messages from her supervisors, who would instruct her on specific areas of the jobsite to focus on, which could take up to 20 minutes, time for which she was not paid. This off-the-clock work could have been recorded by CHIRO, but it refused to do so to avoid payment of additional wages to Ms. Maldonado Zepeda and other aggrieved employees. Thus, CHIRO failed to track this time spent working off-the-clock before and after their scheduled shifts, and Ms. Maldonado Zepeda and other aggrieved employees received no compensation for this time they remained under CHIRO's control.

Second, upon information and belief, because CHIRO frowned upon employees accruing meal period penalties, CHIRO pressured employees who had signed invalid meal period waivers (*see infra*) to clock out before they had worked six (6) hours in a day, in order to limit their eligibility for meal periods they otherwise would have received. As stated, CHIRO required Ms. Maldonado Zepeda to clock out at the end of her scheduled shift and continues working to complete tasks before she could leave for the day. Thus, Ms. Maldonado Zepeda and other aggrieved employees were required to perform their assigned tasks off-the-clock because CHIRO wanted to avoid paying penalties for missed meal periods.

Third, during the relevant time period, CHIRO had, and continues to have, a company-wide policy and/or practice of strictly staffing its jobsites based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. CHIRO's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload and provide uninterrupted meal period coverage. Also, CHIRO has systematically, and on a company-wide basis, understaffed its jobsites by adopting a single-staffing model for some shifts, whereby only one (1) employee was scheduled to work at certain times, thereby failing to provide

adequate meal period coverage to permit those employees to take compliant meal periods. CHIRO also failed to schedule meal periods, which further caused Ms. Maldonado Zepeda and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Ms. Maldonado Zepeda and other aggrieved employees were not afforded uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods.

Further, CHIRO maintained a company-wide on-premises meal period policy, which mandated that Ms. Maldonado Zepeda and other aggrieved employees sometimes remain on the jobsite premises during their meal periods. Because Ms. Maldonado Zepeda and other aggrieved employees were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Ms. Maldonado Zepeda was unable to run personal errands or pick up food at a restaurant because she was unable to leave the work premises. Thus, CHIRO effectively maintained control over Ms. Maldonado Zepeda and other aggrieved employees during their meal periods. Consequently, Ms. Maldonado Zepeda and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and adhere to CHIRO's practices and/or policies. CHIRO did not compensate Ms. Maldonado Zepeda and other aggrieved employees for the time they spent working off the clock during meal periods.

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

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

CHIRO's failure to pay Ms. Maldonado Zepeda 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. Maldonado Zepeda 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. 5-2001 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, § 11050(2)(K) (defining “Hours Worked”).

As set forth above, as a result of CHIRO’s policy of limiting the amount of overtime employees could accrue, CHIRO required Ms. Maldonado Zepeda and other aggrieved employees to perform various work-related tasks off-the-clock outside of their scheduled shifts, including waiting to be let inside CHIRO’s jobsites to clock in, waiting for a security guard to let them out of their jobsites after clocking out, and answering phone calls and texts messages from CHIRO. CHIRO failed to track this time Ms. Maldonado Zepeda and other aggrieved employees spent working off-the-clock, and Ms. Maldonado Zepeda and other aggrieved employees received no compensation for this time.

Additionally, as stated above, on information and belief, in order to limit the meal penalties that CHIRO would otherwise owe, CHIRO pressured Ms. Maldonado Zepeda and other aggrieved employees to clock out before they worked six (6) hours in day to limit their eligibility for meal periods, but required them to continue working, time for which they were not paid. Additionally, as stated above, due to CHIRO’s uniform practices and/or policies of utilizing labor budgets, understaffing and/or single-staffing while assigning heavy workloads, failing to schedule meal periods, and requiring that Ms. Maldonado Zepeda and other aggrieved employees remain on the jobsite premises during meal periods, Ms. Maldonado Zepeda and other aggrieved employees were required to work off-the-clock during meal periods.

Thus, CHIRO did not pay minimum wages for all hours worked by Ms. Maldonado Zepeda and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CHIRO 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, CHIRO regularly failed to pay at least minimum wages to Ms. Maldonado Zepeda 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. Maldonado Zepeda and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, CHIRO had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet shipment deadlines and productivity expectations, which has resulted in a lack of meal period coverage and prevented Ms. Maldonado Zepeda and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, CHIRO had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Ms. Maldonado Zepeda and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As stated, CHIRO had, and continues to have, a company-wide policy and/or practice of strictly staffing its jobsites based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. CHIRO's use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload and provide uninterrupted meal period coverage. Also, as stated, CHIRO systematically, and on a company-wide basis, understaffed its locations by adopting a single-staffing model for certain shifts, pursuant to their labor budget practices, which resulted in a lack of meal period coverage and prevented Ms. Maldonado Zepeda and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, as stated, CHIRO maintained and implemented a company-wide practice of failing to schedule meal periods, which further caused Ms. Maldonado Zepeda and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Furthermore, as stated, CHIRO maintained a company-wide on-premises meal period policy, which mandated that Ms. Maldonado Zepeda and other aggrieved employees sometimes remain on the jobsite premises during their meal periods. Because Ms. Maldonado Zepeda and other aggrieved employees were restricted from leaving the work premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, CHIRO effectively maintained control over Ms. Maldonado Zepeda and other aggrieved employees during meal periods.

As a result, Ms. Maldonado Zepeda and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately once per month, Ms. Maldonado Zepeda could not take her meal periods until more than seven (7) hours into her shifts.

Further, CHIRO did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Maldonado Zepeda 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.

Moreover, CHIRO had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. CHIRO took the position that non-exempt, hourly paid employees had waived their rights to first 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. Moreover, CHIRO's "Acuerdo de Renuncia Al Periodo De Comida (Para Dias Laborales Que No Duran Mas De 6 Horas)" form requires employees provide written notice should they wish to revoke the waiver. CHIRO's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours, due to blanket meal period waivers signed at or

near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Maldonado Zepeda 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 CHIRO required Ms. Maldonado Zepeda 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 CHIRO's obligation to provide Ms. Maldonado Zepeda and other aggrieved employees with meal periods did not arise until CHIRO had employed them for a full five (5) hours.

At all times herein mentioned, CHIRO knew or should have known that, as a result of these policies, Ms. Maldonado Zepeda and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. CHIRO further knew or should have known that CHIRO did not pay Ms. Maldonado Zepeda and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late. As stated, on information and belief, because CHIRO frowned upon employees accruing meal period penalties, CHIRO's management pressured Ms. Maldonado Zepeda and other aggrieved employees who had signed invalid meal period waivers (*see supra*) to clock out before they had worked six (6) hours in a day and continues working to limit their eligibility for meal periods, in order to strictly limit the meal penalties that would need to be paid by CHIRO. Thus, CHIRO failed to provide Ms. Maldonado Zepeda and other aggrieved employees with compliant, 30-minute meal periods altogether when they were scheduled for six-hour shifts.

Furthermore, CHIRO 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. Maldonado Zepeda and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that CHIRO did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, CHIRO did not pay other aggrieved employees at the correct rate of pay for premiums because CHIRO 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, CHIRO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Maldonado Zepeda and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

During the relevant time period, CHIRO regularly failed to authorize and permit Ms. Maldonado Zepeda 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, CHIRO's policies and/or practices including labor budgeting, understaffing and/or single-staffing, and assigning heavy workloads, prevented Ms. Maldonado Zepeda and other aggrieved employees from being relieved of all duty to take their rest periods. CHIRO also failed to schedule rest periods, which, coupled with CHIRO's failure to provide adequate rest period coverage, further led to Ms. Maldonado Zepeda and other aggrieved employees not being authorized and permitted to take compliant rest periods.

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

As a result of CHIRO's practices and policies, Ms. Maldonado Zepeda and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Ms. Maldonado Zepeda had to forego her rest periods altogether, in order to handle the heavy workload and due to the lack of coverage.

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

to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

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

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

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. CHIRO has not provided Ms. Maldonado Zepeda 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, CHIRO has knowingly and intentionally provided Ms. Maldonado Zepeda and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CHIRO issued uniform wage statements to Ms. Maldonado Zepeda 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, CHIRO violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Second, because CHIRO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, CHIRO did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, CHIRO failed to list the correct amount of net wages in violation of section 226(a)(5). CHIRO 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).

Third, and separately from these violations, CHIRO issued uniform wage statements to Ms. Maldonado Zepeda and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. On information and belief, Ms. Maldonado Zepeda's and other aggrieved employees' wage statements incorrectly list CHIRO's address as "PO Box 31, Colton, CA, 92324," including Ms. Maldonado Zepeda's wage statement dated May 17, 2023, but according to the California Secretary of State's website, the entity's principal address should be "1834 BUSINESS CENTER DRIVE, SAN BERNARDINO, CA 92408." *See example paystub below.*

Statement of Earnings				(909)879-1160	Check Date:	Check #:
Chiro, Inc.	P O Box 31	Colton	CA 92324		05/17/2023	53560
Pay Period: 5/1/2023 THRU 5/15/2023						
Maldonado Zepeda, Yamin	SSN: ***-**-****	Empl Type: Direct Store Labor Exps:	Exemptions: Fed H	State H	Employee #:	

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 of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" At all relevant times, and in violation of Labor Code section 1174(d), CHIRO willfully failed to maintain accurate payroll records for Ms. Maldonado Zepeda 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, CHIRO engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Maldonado Zepeda and other aggrieved employees, in violation of section 1198. Also, in light of CHIRO's failure to provide other aggrieved employees

with second 30-minute meal periods to which they were entitled, CHIRO kept no records of meal start and end times for second meal periods.

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

Ms. Maldonado Zepeda 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, CHIRO willfully failed to pay Ms. Maldonado Zepeda and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

Ms. Maldonado Zepeda 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, CHIRO has a company-wide practice and/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, CHIRO terminated Ms. Maldonado Zepeda's employment on or about May 16, 2023. However, on information and belief, CHIRO did not provide her with all of her final pay until May 18, 2023. Thus, CHIRO failed to pay Ms. Maldonado Zepeda her final wages immediately, in violation of California Labor Code section 201.

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

Ms. Maldonado Zepeda 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 § 246 – Failure to Properly Calculate 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. California 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, CHIRO did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, CHIRO paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CHIRO 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, CHIRO failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, CHIRO paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

CHIRO'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).

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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

CHIRO’s jobsite locations are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. CHIRO could have provided Ms. Maldonado Zepeda and other aggrieved employees with a suitable resting facility within the jobsite locations, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Ms. Maldonado Zepeda and other aggrieved employees were forced to adjust to areas not conducive to resting, such as sitting on top of boxes or searching for areas outside of the store or jobsite location which are not designated or reserved for their rest.

CHIRO did not provide Ms. Maldonado Zepeda and other aggrieved employees with suitable resting facilities during their work hours, particularly during meal or rest periods. In other words, during the times when Ms. Maldonado Zepeda and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, CHIRO denied them any area within the jobsite locations to cease work and recover. Moreover, CHIRO did not inform Ms. Maldonado Zepeda and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of CHIRO’s company-wide failure to provide suitable resting facilities in its jobsite locations, Ms. Maldonado Zepeda and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their stores or jobsite locations to cease work and recover. CHIRO’s failure to provide suitable resting facilities to Ms. Maldonado Zepeda and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

Ms. Maldonado Zepeda and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring CHIRO into compliance with California’s resting facilities requirements, pursuant to Labor Code sections 1194.5 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.”

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

Accordingly, Ms. Maldonado Zepeda 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. Maldonado Zepeda, 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 CHIRO for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Therefore, on behalf of all aggrieved employees, Ms. Maldonado Zepeda 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:

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

Best Regards,



Anthony Castillo

Copy: CHIRO, INC. (via U.S. Certified Mail)

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

SENDER: COMPLETE THIS SECTION

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

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1834 Business Center Drive
San Bernardino, CA 92408

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9590 9402 7690 2122 7191 61

7022 2410 0000 2406 0194

PS Form 3811, July 2000 PSN 7500-02-000-9053

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A. Signature ☐ X
B. Address ☐ ☐ Agent

☐ Picked up by (Printed Name) C. Date of Delivery ☐ Address

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

Service Type

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☐ Insured Mail	☐ Signature Confirmation™
☐ Collect on Delivery	☐ Signature Confirmation™ Restricted Delivery
☐ Insured on Delivery Restricted Delivery	

10 **Rate Restricted Delivery**

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CHIRO, INC.
1834 Business Center Drive
San Bernardino, CA 92408

**PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN AND FEE. YOU AT COVERED BY**

CERTIFIED MAIL®



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Postage _____ Total Postage _____

Sent To _____ Sent To _____

Street Address _____ Street Address _____

City, State, ZIP+4 _____ City, State, ZIP+4 _____

CHIRO, INC.

1834 Business Center Drive
San Bernardino, CA 92408

Made by:
Chiro Inc.

See Reverse for Instructions

CHIRO, INC.
P.O. BOX #31
Colton, CA 92324

CHIRO, INC.
P.O. BOX #31
Colton, CA 92324

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																	
■ Complete items 1, 2, and 3. ■ Pick up name and address on the reverse even if it is the same address that you sent to.		A. Signature ☒ ☐																	
CHIRO, INC. P.O. BOX #31 Colton, CA 92324		B. Inspected by (Printed Name) ☐ ☐																	
1. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below: ☐ No		C. Date of Delivery ☐ ☐																	
2. Article Number (Transfer from service label) 7022 2430 0000 2406 0200		Service Type <table border="0"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Envelope</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail</td> </tr> <tr> <td>☐ Certified Mail</td> <td>☐ Signature Mail Restricted Delivery</td> </tr> <tr> <td>☐ Certified Mail Restricted Delivery</td> <td>☐ Signature ConfirmationSM</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> <tr> <td>☐ Insured Mail</td> <td></td> </tr> <tr> <td>☐ Insured Mail Restricted Delivery</td> <td></td> </tr> </table>		☐ Adult Signature	☐ Priority Mail Envelope	☐ Adult Signature Restricted Delivery	☐ Registered Mail	☐ Certified Mail	☐ Signature Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Signature Confirmation SM	☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery	☐ Insured Mail		☐ Insured Mail Restricted Delivery		Domestic Return Receipt	
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2. Article Number (Transfer from service label)

7022 2410 0000 2406 0194

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

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A. Signature

[Signature]

☒ Agent

☐ Addressee

Received by (Printed Name)

Renee Halarth

C. Date of Delivery

7/14

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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 **April 18, 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:

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☐ **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 FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **April 18, 2024**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name

Signature

