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Case #24CV436504

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

LETHU VO, individually, and on behalf of other
members of the general public similarly situated,
and as an
aggrieved employee pursuant to the Private
Attorneys General Act (“PAGA”),

Plaintiff,

vs.

EXCITE CREDIT UNION, a California
nonprofit corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 24CV436504

**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 Pay Meal Period Premiums at the Regular Rate of Pay);
- (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 Accurate 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 Lethu Vo, individually and on behalf of all other members of the public similarly
2 situated, and as an aggrieved employee and on behalf of all other aggrieved employees, alleges as
3 follows:

4 JURISDICTION AND VENUE

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

17 2. This Court has jurisdiction over Defendants because Defendants are either citizens of
18 California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of
19 the California market so as to render the exercise of jurisdiction over them by the California courts
20 consistent with traditional notions of fair play and substantial justice. There is no basis for federal
21 diversity jurisdiction in this action because there is no complete diversity, and this case falls within the
22 statutory exceptions to “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C.
23 § 1332(d)(4). Upon information and belief, two-thirds or more of the class members and Defendants are
24 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens of
25 California; (b) the alleged wage and hour violations occurred in California; (c) significant relief is being
26 sought against Defendants whose violations of California wage and hour laws form a significant basis
27 for Plaintiff’s claims; and (d) no other class action has been filed within the past three (3) years on behalf
28 of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in San Jose, County of Santa Clara, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

THE PARTIES

4. Plaintiff Lethu Vo is a resident of Gilroy, in Santa Clara County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately August 8, 2016 to February 2024. Plaintiff worked for Defendants as a Financial Services Representative II and a Call Center Representative II at their Blossom Valley branch location in San Jose, California. During her employment, Plaintiff typically worked five (5) to eight (8) hours or more per day and five (5) days per week. By the end of her employment, Plaintiff was compensated approximately \$23.00 per hour. Plaintiff's primary job duties as a Financial Services Representative II included, without limitation, selling financial products and services, and processing transactions. Plaintiff's primary job duties as a Call Center Representative II included, without limitation, responding to customer issues and questions over the phone, email, and online messages.

5. EXCITE CREDIT UNION was and is, upon information and belief, a California nonprofit corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

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

7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of EXCITE CREDIT UNION at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, EXCITE CREDIT UNION and/or DOES 1 through 10 (collectively, “Defendants” or “ECU”), each acting as the agent, employee, alter

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

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

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

GENERAL ALLEGATIONS

11. Defendants are member-owned financial cooperative with branches in California and North Carolina. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in San Jose, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

13. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in San Jose, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage

1 statements to all non-exempt, hourly paid employees in California, irrespective of their work locations.
2 Upon information and belief, Defendants process payroll for departing employees in the same manner
3 throughout the State of California, regardless of the manner in which each employee's employment ends.

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

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

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

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

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

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

25 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
26 have known that Plaintiff and/or class members were entitled to meal periods in accordance with the
27 California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at
28 their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute

1 meal periods and that Plaintiff and/or class members were not provided with all meal periods or payment
2 of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
3 uninterrupted, thirty (30) minute meal period.

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

11 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
12 have known that Plaintiff and class members were entitled to receive complete and accurate wage
13 statements in accordance with California law. In violation of the California Labor Code, Plaintiff and
14 class members were not provided complete and accurate wage statements.

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

19 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
20 have known that Plaintiff and class members were entitled to timely payment of all wages earned upon
21 termination of employment. In violation of the California Labor Code, Plaintiff and class members did
22 not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages,
23 meal and rest period premiums, and/or sick leave pay, within permissible time periods.

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

1 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
2 have known that Plaintiff and class members were entitled to receive sick leave benefits to be paid at a
3 regular rate of pay, that included, as eligible income, all income derived from incentive pay,
4 nondiscretionary bonuses, and/or other forms of compensation. In violation of the California Labor
5 Code, Defendants failed to include all forms of remuneration in calculating the regular rate of pay for
6 sick leave pay.

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

12 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

28 (a) The aggrieved employee or representative shall give written notice by online

1 filing with the LWDA and by certified mail to the employer of the specific
2 provisions of the California Labor Code alleged to have been violated, including
3 the facts and theories to support the alleged violation.

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

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

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

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

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

26 (c) The employer may cure the alleged violation within thirty-three (33) calendar
27 days of the postmark date of the notice sent by the aggrieved employee or
28 representative. The employer shall give written notice within that period of time

1 by certified mail to the aggrieved employee or representative and by online
2 filing with the LWDA if the alleged violation is cured, including a description of
3 actions taken, and no civil action pursuant to Section 2699 may commence. If
4 the alleged violation is not cured within the 33-day period, the aggrieved
5 employee may commence a civil action pursuant to Section 2699.

6 33. On May 29, 2024, Plaintiff provided written notice by online filing to the LWDA and by
7 Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been
8 violated, including facts and theories to support the alleged violations, in accordance with California
9 Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of
10 seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff's written
11 notice and assigned Plaintiff PAGA Case Number LWDA-CM-1031017-24. A true and correct copy of
12 Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

16 35. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code
17 sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California
18 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
19 1197.1, and 1198.

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

28 37. Defendants, at all times relevant to this complaint, were employers or persons acting on

1 behalf of an employer(s) who violated Plaintiff's and other aggrieved employees' rights by violating
2 various sections of the California Labor Code as set forth above.

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

5 39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a),
6 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney
7 general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and
8 the State of California against Defendants for violations of California Labor Code sections 201, 202, 204,
9 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

10 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

28 (a) Whether Defendants required Plaintiff and class members to work over eight (8)

1 hours per day, over twelve (12) hours per day, or over forty (40) hours per week
2 and failed to pay all legally required overtime compensation to Plaintiff and
3 class members;

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

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

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

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

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

15 (g) Whether Defendants failed to pay earned overtime wages, minimum wages,
16 meal and rest period premiums, and/or sick leave pay due to Plaintiff and class
17 members upon their discharge;

18 (h) Whether Defendants failed to timely pay overtime wages, minimum wages,
19 meal and rest period premiums, and/or sick leave pay due to Plaintiff and class
20 members during their employment;

21 (i) Whether Defendants failed to properly calculate the regular rate of pay upon
22 which Plaintiff's and class members' sick leave rate of pay was based;

23 (j) Whether Defendants engaged in unlawful and unfair business practices in
24 violation of California Business & Professions Code sections 17200, *et seq.*; and

25 (k) The appropriate amount of damages, restitution, or monetary penalties resulting
26 from Defendants' violations of California law.

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

- 1 (a) Numerosity: The class members are so numerous that joinder of all members
2 would be unfeasible and impractical. The membership of the entire class is
3 unknown to Plaintiff at this time; however, the class is estimated to be greater
4 than one hundred (100) individuals and the identity of such membership is
5 readily ascertainable by inspection of Defendants' employment records.
- 6 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
7 interests of each class member with whom she has a well-defined community of
8 interest, and Plaintiff's claims (or defenses, if any) are typical of all class
9 members as demonstrated herein.
- 10 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
11 interests of each class member with whom she has a well-defined community of
12 interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
13 that she has an obligation to make known to the Court any relationship, conflicts
14 or differences with any class member. Plaintiff's attorneys, the proposed class
15 counsel, are versed in the rules governing class action discovery, certification,
16 and settlement. Plaintiff has incurred, and throughout the duration of this action,
17 will continue to incur costs and attorneys' fees that have been, are, and will be
18 necessarily expended for the prosecution of this action for the substantial benefit
19 of each class member.
- 20 (d) Superiority: The nature of this action makes the use of class action adjudication
21 superior to other methods. A class action will achieve economies of time, effort,
22 and expense as compared with separate lawsuits, and will avoid inconsistent
23 outcomes because the same issues can be adjudicated in the same manner and at
24 the same time for the entire class.
- 25 (e) Public Policy Considerations: Employers in the State of California violate
26 employment and labor laws every day. Current employees are often afraid to
27 assert their rights out of fear of direct or indirect retaliation. Former employees
28 are fearful of bringing actions because they believe their former employers

1 might damage their future endeavors through negative references and/or other
2 means. Class actions provide the class members who are not named in the
3 complaint with a type of anonymity that allows for the vindication of their rights
4 while simultaneously protecting their privacy.

5 **FIRST CAUSE OF ACTION**

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

7 **(Against all Defendants)**

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

10 49. Labor Code section 1198 makes it illegal to employ an employee under conditions of
11 labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198
12 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard
13 conditions of labor for employees. The employment of any employee . . . under conditions of labor
14 prohibited by the order is unlawful.”

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

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

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

28 53. California Labor Code section 510 codifies the right to overtime compensation at one

1 and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or
2 forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to
3 overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve
4 (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

5 54. During the relevant time period, Defendants willfully failed to pay all overtime wages
6 owed to Plaintiff and class members. During the relevant time period, Plaintiff and class members were
7 not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in
8 excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours
9 worked were not recorded.

10 55. During the relevant time period, Defendants had, and continue to have, a company-wide
11 policy and/or practice of discouraging and impeding Plaintiff and class members from recording hours
12 worked that were outside of their scheduled shifts in order to limit the amount of overtime employees
13 could accrue. On information and belief, this policy of limiting overtime, coupled with Defendants'
14 practices of understaffing and assignment of heavy workloads, led Plaintiff and class members to work
15 off-the-clock outside of their scheduled shift times in order to complete their assigned tasks.

16 56. For example, Defendants' management required Plaintiff and class members to follow-
17 up on all customer calls on the same day they were received, pressured them to complete as many calls
18 as possible and as quickly as possible within their scheduled shift times, and evaluated the length of
19 employees' customer calls on a monthly basis. In order to meet Defendants' expectations, Plaintiff spent
20 ten (10) minutes before clocking in for her scheduled shift to create a task list in preparation for her
21 workday. Further, at the end of her shifts and after clocking out, Defendants' management sometimes
22 required Plaintiff to speak with co-workers and/or customers to answer questions about customer
23 accounts and other work-related matters. As another example, Defendants required Plaintiff and class
24 members to complete mandatory training programs, but did not allocate time for them to complete the
25 trainings during their shifts. As a result, about once a month, Plaintiff was required to study for and/or
26 complete the training programs while she was off-the-clock. Thus, Defendants failed to track all of the
27 time that employees spent performing work-related tasks outside of their shifts, and Plaintiff and class
28 members received no compensation for this time.

1 57. Defendants knew or should have known that, as a result of these company-wide
2 practices and/or policies, Plaintiff and class members were performing their assigned duties off-the-clock
3 before and after their shifts, and were suffered or permitted to perform work for which they were not
4 paid. Because Plaintiff and class members worked shifts of eight (8) hours a day or more, or forty (40)
5 hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
6 Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually
7 worked.

8 58. Moreover, Defendants did not pay Plaintiff and class members the correct overtime rate
9 for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid
10 Plaintiff and class members incentive pay, nondiscretionary bonuses, and/or other forms of
11 remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all
12 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration,
13 into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
14 Therefore, during times when Plaintiff and class members worked overtime and received these other
15 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

16 59. For example, Defendants paid Plaintiff and class members nondiscretionary bonuses
17 and/or incentive pay which were listed on Plaintiff's and class members' wage statements as "Bonus"
18 and "Incentive." During pay periods that Plaintiff and class members were paid overtime wages,
19 Defendants did not incorporate the nondiscretionary bonuses and/or incentive pay into Plaintiff's and
20 class members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for
21 overtime hours worked. Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly
22 rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the
23 overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages
24 to Plaintiff and class members on a company-wide basis.

25 60. Defendants' failure to pay Plaintiff and class members the balance of overtime
26 compensation, as required by California law, violates the provisions of California Labor Code sections
27 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled
28 to recover from Defendants their unpaid overtime compensation, as well as interest, costs, and attorneys'

1 fees.

2 **SECOND CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum**
4 **Wages**
5 **(Against all Defendants)**

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

8 62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
9 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid
10 to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable
11 work time is defined in IWC Wage Order No. 4-2001 as “the time during which an employee is subject
12 to the control of an employer, and includes all the time the employee is suffered or permitted to work,
13 whether or not required to do so.” Cal. Code Regs. Tit. 8, § 11040(2)(K) (defining “Hours Worked”).

14 63. As stated above, as a result of Defendants’ policies and/or practices of limiting the
15 amount of overtime employees could accrue, understaffing, and assigning heavy workloads, Plaintiff and
16 class members were required to perform various work-related tasks off-the-clock, including preparing a
17 list of tasks for the workday, communicating with coworkers and/or customers about work-related
18 matters, and studying for and/or completing mandatory online training programs. Defendants failed to
19 track this time Plaintiff and class members spent working off-the-clock, and Plaintiff and class members
20 received no compensation for this time.

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

25 65. Defendants’ failure to pay Plaintiff and class members minimum wages violates
26 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor
27 Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated
28 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

1 **THIRD CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198— Failure to Pay Meal Period**

3 **Premiums at the Regular Rate of Pay**

4 **(Against all Defendants)**

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

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

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

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

23 70. Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage Order, if an
24 employer fails to provide an employee a meal period, the employer shall pay the employee one (1)
25 additional hour of pay at the employee's regular rate of compensation for each work day that the meal
26 period was not provided. An employee's regular rate of compensation includes all remuneration for
27 employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive
28 pay. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("the term 'regular rate of

1 compensation' in section 226.7(c) has the same meaning as 'regular rate of pay' in section 510(a) and
2 encompasses not only hourly wages but all nondiscretionary payments for work performed by the
3 employee.'").

4 71. During the relevant time period, at times, Plaintiff and class members worked shifts in
5 which they were prevented from being relieved of all duties and required to perform some of their
6 assigned duties during meal periods. When this occurred, Defendants were required to pay Plaintiff and
7 class members meal period premiums when meal periods were late, missed, shortened, or interrupted.

8 72. Defendants have engaged in a company-wide practice and/or policy of not paying full
9 meal period premiums owed when compliant meal periods are not provided. To the extent that
10 Defendants did pay Plaintiff and class members meal period premiums, they did so at the incorrect rates.
11 In addition to an hourly wage, as stated, Defendants paid Plaintiff and class members incentive pay,
12 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California
13 Labor Code, Defendants failed to include all forms of compensation, including incentive pay,
14 nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of
15 pay. Therefore, during times when Plaintiff and class members received meal period premiums and
16 these other forms of pay, Defendants failed to pay full meal period premiums by paying a lower rate than
17 required. Specifically, Defendants paid Plaintiff and class members meal period premiums at their
18 straight hourly rate of pay instead of at their regular rate of pay. Defendants' failure to properly calculate
19 the rates of pay for meal period premiums based on all remuneration paid has resulted in an
20 underpayment of meal period premiums to Plaintiff and class members on a company-wide basis.

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

25 **FOURTH CAUSE OF ACTION**

26 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**

27 **(Against all Defendants)**

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

1 allegation set forth above.

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

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

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

20 78. During the relevant time period, Defendants regularly failed to authorize and permit
21 Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or
22 major fraction thereof. Defendants had, and continue to have, a company-wide policy and/or practice of
23 understaffing while assigning heavy workloads, which resulted in a lack of rest period coverage because
24 there were too few employees on duty to handle the heavy workloads and provide rest period coverage.
25 Moreover, Defendants had a company-wide practice of failing to adhere to a schedule for rest periods,
26 which further led to Plaintiff and class not being authorized and permitted to take rest periods.

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

1 uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiff had to forego
2 her rest period about once a week due to understaffing and heavy workload, including pressure to
3 follow-up with all customer calls that came in on any given day. As a further example, about once a
4 week, Plaintiff had to cut her rest period short for the same reasons.

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

15 86. Moreover, because Defendants did not calculate Plaintiff's and Subclass members'
16 regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums,
17 and/or paid sick leave, Defendants did not list the correct amount of gross wages in compliance with
18 section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages in
19 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect
20 during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums,
21 and/or paid sick leave, in violation of section 226(a)(9).

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

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

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

19 90. Plaintiff and Subclass members are entitled to recover from Defendants the greater of
20 their actual damages caused by Defendants’ failure to comply with California Labor Code section
21 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

22 **SIXTH CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination** 24 **(Against all Defendants)**

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

27 92. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an
28 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and

1 payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
2 shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has
3 given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
4 is entitled to his or her wages at the time of quitting.

5 93. On information and belief, Defendants have a company-wide practice and/or policy of
6 paying departing employees their final wages late, instead of adhering to the time requirements set forth
7 in Labor Code section 201. For example, Defendants terminated Plaintiff on or about February 6, 2024;
8 however, she received her final paycheck by mail about one (1) day later. Thus, Defendants failed to pay
9 Plaintiff her final wages immediately, in violation of California Labor Code section 201.

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

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

21 SEVENTH CAUSE OF ACTION

22 Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment 23 (Against all Defendants)

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

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

1 98. At all times relevant herein set forth, Labor Code section 204 provides that all wages
2 earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive,
3 of any calendar month, other than those wages due upon termination of an employee, are due and
4 payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the
5 labor was performed. Labor Code section 204 further provides that all wages earned by any person in
6 any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other
7 than those wages due upon termination of an employee, are due and payable between the first (1st) and
8 the tenth (10th) day of the following month.

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

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

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

22 **EIGHTH CAUSE OF ACTION**

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

24 **(Against all Defendants)**

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

27 103. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil
28 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.

1 Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d),
2 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including
3 Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section
4 2699.5, including sections 246, 516, and 1182.12.

5 104. Defendants' conduct, as alleged herein, violates numerous sections of the California
6 Labor Code, including, but not limited to, the following:

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

- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein; and
- (j) Violation of Labor Code section 246 for failure to properly calculate the sick leave paid to Plaintiff and other aggrieved employees, as set forth below.

105. First, as stated, Defendants had, and continue to have, company-wide policies and/or practices of understaffing while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Plaintiff and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, on information and belief, Defendants had a company-wide practice of failing to schedule meal periods and/or failing to adhere to a schedule for meal periods, which further prevented Plaintiff and/or other aggrieved employees from taking all compliant meal periods. As a result of Defendants' practices and/or policies, Plaintiff and/or 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.

106. Moreover, Defendants 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. Plaintiff and/or 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.

107. At all times mentioned herein, Defendants knew or should have known that as a result of their company-wide policies and/or practices, Plaintiff and/or other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that they did not pay Plaintiff and/or other aggrieved employees all meal period premiums when meal periods were missed, late, interrupted, and/or shortened.

108. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods were not provided. Because of

1 this practice and/or policy, Plaintiff and/or other aggrieved employees have not received all premium pay
2 for missed, interrupted, late and/or shortened meal periods. Alternatively, as stated, to the extent that
3 Defendants did pay Plaintiff and other aggrieved employees premium pay for missed, late, interrupted,
4 and/or shortened meal periods, Defendants did not pay Plaintiff and other aggrieved employees at the
5 correct rate of pay for premiums because Defendants systematically failed to include all forms of
6 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in
7 the regular rate of pay.

8 109. As a result, Defendants failed to provide Plaintiff and/or other aggrieved employees
9 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed
10 to pay the full meal period premiums due. Plaintiff and other aggrieved employees are therefore entitled
11 to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

22 111. During the relevant time period, Defendants did not pay Plaintiff and other aggrieved
23 employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid
24 Plaintiff and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of
25 remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all
26 remunerations, including incentive pay and/or nondiscretionary bonuses into the calculation of the
27 regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when
28 Plaintiff and other aggrieved employees took sick leave and received these other forms of pay,

1 Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than required.
2 Specifically, Defendants paid Plaintiff and other aggrieved employees sick leave based on their hourly
3 rate of pay instead of their regular rate of pay.

4 112. Defendants' failure to properly calculate the sick leave rates of pay based on all
5 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other aggrieved
6 employees on a company-wide basis in violation of California Labor Code section 246(l). Plaintiff and
7 other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
8 sections 248.5 and/or 2699(a), (f), and (g).

9 **NINTH CAUSE OF ACTION**

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

11 **Unlawful Business Practices**

12 **(Against all Defendants)**

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

15 114. Defendants are "persons" as defined by California Business & Professions Code section
16 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

17 115. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
18 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact
19 and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce
20 important rights affecting the public interest within the meaning of Code of Civil Procedure section
21 1021.5.

22 116. Defendants' activities, as alleged herein, are violations of California law, and constitute
23 unlawful business acts and practices in violation of California Business & Professions Code sections
24 17200, *et seq.*

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

28 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class

members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;

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

(c) Failing to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, in violation of California Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order, as alleged herein;

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

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

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

(g) Failing to properly calculate the sick leave paid to Plaintiff and class members in violation of California Labor Code section 246(l), as set forth below.

118. 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.”

119. During the relevant time period, Defendants did not pay Plaintiff and class members the correct sick leave rates of pay. Defendants failed to correctly use either method of calculation under Labor Code section 246(l) to determine Plaintiff’s and class members’ sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants 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 Plaintiff and class members took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, Defendants paid Plaintiff and class members sick leave based on their hourly rate of pay instead of their regular rate of pay.

120. Defendants’ failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class members on a company-wide basis in violation of California Labor Code section 246(l).

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

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

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TENTH CAUSE OF ACTION

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

Unfair Business Practices

(Against all Defendants)

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

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

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

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

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

128. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and

1 class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by
2 section 226.7 withheld and retained by Defendants during a period that commences four years prior to
3 the filing of the initial complaint; a permanent injunction requiring Defendants to pay all statutory
4 benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees
5 pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award
6 of costs.

7 **REQUEST FOR JURY TRIAL**

8 Plaintiff requests a trial by jury.

9 **PRAYER FOR RELIEF**

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

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

15 **Class Certification**

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

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

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

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

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

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

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

As to the Second Cause of Action

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

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

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

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

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

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

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by willfully failing to pay meal period premiums at the regular rate of pay to Plaintiff and class members;

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

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

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

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

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

As to the Fourth Cause of Action

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

23. That the Court make an award to the Plaintiff and class members of one (1) hour of pay

at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

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

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

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

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

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

As to the Fifth Cause of Action

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

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

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

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

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

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

As to the Sixth Cause of Action

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

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

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

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

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

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

As to the Seventh Cause of Action

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

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

43. For statutory penalties according to proof pursuant to California Labor Code section 210;

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

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

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

As to the Eighth Cause of Action

47. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); and 246 (by failing to properly calculate sick leave pay);

48. For civil penalties pursuant to the California Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), 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;

49. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' 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;

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

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

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, and failing to properly calculate Plaintiff's and class members' sick leave rates of pay, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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

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

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

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

As to the Tenth Cause of Action

57. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under California Labor Code section 226.7

1 constitutes an unfair business practice in violation of California Business and Professions Code sections
2 17200, *et seq.*;

3 58. For restitution of the statutory benefits under California Labor Code section 226.7
4 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts
5 were due and payable;

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

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

11 61. For pre-judgment and post-judgment interest as provided by law; and

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

13
14 Dated: July 20, 2026

Respectfully submitted,

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16 Capstone Law APC

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18 By:

19 Robert Drexler
Jonathan Lee
Robert Myong

20 Attorneys for Plaintiff Lethu Vo
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EXHIBIT “1”



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SAIRAH BUDHWANI
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May 29, 2024

VIA ONLINE SUBMISSION

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

Subject: *Lethu Vo v. Excite Credit Union*

Dear PAGA Administrator:

This office represents Lethu Vo in connection with her claims under the California Labor Code. Ms. Vo was an employee of EXCITE CREDIT UNION ("ECU").

The employers may be contacted directly at the addresses below:

EXCITE CREDIT UNION
151 BERNAL ROAD
SAN JOSE, CA 95119

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

ECU employed Ms. Vo as an hourly paid, non-exempt employee from approximately August 2016 to February 2024. Ms. Vo worked for ECU as a Financial Services Representative II and a Call Center Representative II at ECU's Blossom Valley branch location in San Jose, California. During her employment, Ms. Vo typically worked five (5) to eight (8) hours or more per day and five (5) days per week. Ms. Vo was compensated approximately \$23.00 per hour at the time her employment ended with ECU. Her job duties as a Financial Services Representative II included, without limitation, selling financial products and services, and processing transactions. Her job duties as a Call Center Representative II included, without limitation, responding to customer issues and questions over the phone, email, and online messages.

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

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

EXCITE CREDIT UNION is a California nonprofit corporation. They are a member-owned financial cooperative with branches in California and North Carolina. Upon information and belief, ECU maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Jose, California, for all non-exempt, hourly paid employees working for ECU in California, including Ms. Vo and other aggrieved employees. At all relevant times, ECU issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Vo and other aggrieved employees, regardless of their location or position.

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

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

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

First, during the relevant time period, ECU had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Vo and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with ECU's practice of understaffing and assignment of heavy workloads (*see infra*), led Ms. Vo and other aggrieved employees worked off-the-clock outside of their scheduled shift times in order to complete their assigned tasks.

For example, ECU's management required Ms. Vo and other aggrieved employees to follow-up on all customer calls on the same day they were received, pressured them to complete as many calls as possible and as quickly as possible within their scheduled shift times, and evaluated the length of employees' customer calls on a monthly basis. In order to meet ECU's expectations, Ms. Vo spent ten (10) minutes before clocking in for her scheduled shift to create a task list in preparation for her workday. Further, at the end of her shifts and after clocking out, ECU's management sometimes required Ms. Vo to speak with co-workers and/or customers to answer questions about customer accounts and other work-related matters. As another example, ECU required Ms. Vo and other aggrieved employees to complete mandatory training programs, but did not allocate time for them to complete the trainings during their shifts. As a result, about once a month, Ms. Vo was required to study for and/or complete the training programs while she was off-the-clock. Thus, ECU failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Ms. Vo and other aggrieved employees received no compensation for this time.

Second, Ms. Vo and other aggrieved employees were required to respond to communications from management on their personal mobile devices and complete work-related tasks outside their scheduled shifts. For example, three (3) times per week while off-the-clock, ECU required Ms. Vo to respond to phone calls regarding software access, resolving technical issues, and work assignments for up to 30 minutes per instance. This off-the-clock work could have been recorded by ECU, but it refused to do so to avoid payment of overtime wages to Ms. Vo and other aggrieved employees.

Third, as stated, ECU had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, resulting in a failure to provide other aggrieved employees with adequate meal period coverage. In addition, on information and belief, ECU also had a practice of failing to schedule meal periods and/or failing to adhere to a schedule for meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted to complete their assigned duties and handle work demands, time for which they were not paid.

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

Furthermore, ECU did not pay Ms. Vo and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, ECU paid Ms. Vo

and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ECU 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. Vo and other aggrieved employees worked overtime and received these other forms of pay, ECU failed to pay all overtime wages by paying a lower overtime rate than required.

For example, ECU paid Ms. Vo and other aggrieved employees nondiscretionary bonuses and/or incentive pay which were listed on Ms. Vo's and other aggrieved employees' wage statements as "Bonus" and "Incentive." During pay periods that Ms. Vo and other aggrieved employees were paid overtime wages, ECU did not incorporate the nondiscretionary bonuses and/or incentive pay into Ms. Vo's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, ECU paid Ms. Vo and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. ECU's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Vo and other aggrieved employees on a company-wide basis.

ECU's failure to pay Ms. Vo 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. Vo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As stated above, due to ECU's company-wide practice of limiting the amount of overtime employees could accrue, understaffing, and assigning heavy workloads, Ms. Vo and other aggrieved employees were required to perform various work-related tasks off-the-clock, including preparing a list of tasks for the workday, communicating with coworkers and/or customers about work-related matters, and studying for and/or completing mandatory online training programs. However, ECU failed to track all of this time Ms. Vo and other aggrieved employees spent working off-the-clock, and thus, Ms. Vo and other aggrieved employees received no compensation for this time.

Also, as set forth above, due to ECU's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Thus, ECU did not pay at least minimum wages for all hours worked by Ms. Vo and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium

payment, ECU 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, ECU regularly failed to pay at least minimum wages to Ms. Vo 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. Vo 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, ECU had, and continues to have, company-wide policies and/or practices of understaffing while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Vo and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, on information and belief, ECU had a company-wide practice of failing to schedule meal periods and/or failing to adhere to a schedule for meal periods, which further prevented Ms. Vo and/or other aggrieved employees from taking all compliant meal periods. As a result of ECU's practices and/or policies, Ms. Vo and/or 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.

Moreover, ECU 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. Vo and/or other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

Furthermore, ECU engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Ms. Vo and/or other aggrieved employees have not received all premium pay for missed, interrupted, late and/or shortened meal periods. Alternatively, to the extent that ECU did pay Ms. Vo and other aggrieved employees premium pay for missed, late, interrupted, and/or shortened meal periods, ECU did not pay Ms. Vo and other aggrieved employees at the correct rate of pay for premiums because ECU 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, ECU failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Vo and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

During the relevant time period, ECU regularly failed to authorize and permit Ms. Vo 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, ECU's company-wide practices of understaffing and assigning heavy workloads resulted in a lack of rest period coverage and prevented Ms. Vo and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. ECU also failed to adhere to a schedule for rest periods, which, coupled with ECU's failure to provide adequate rest period coverage, further led to Ms. Vo and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, during the relevant time period, ECU maintained a company-wide on-premises rest period policy, which effectively required that other aggrieved employees remain on ECU's premises during their rest periods. Because other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their

rest periods freely for their own purposes, such as running personal errands. Thus, ECU effectively maintained control over other aggrieved employees during rest periods.

As a result of ECU's practices and policies, Ms. Vo 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 10-minute rest periods to which they were entitled. For example, Ms. Vo had to forego a rest period about once a week due to understaffing and heavy workload, including pressure to follow-up with all customer calls that came in on any given day. As a further example, about once a week, Ms. Vo had to cut her rest period short for the same reasons.

ECU has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Vo and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ECU did pay Ms. Vo and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ECU did not pay Ms. Vo and other aggrieved employees at the correct rate of pay for premiums because ECU 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, ECU failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Vo and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

Because ECU did not record the time Ms. Vo and/or other aggrieved employees spent working off-the-clock, ECU did not list the correct amount of gross wages and net wages earned by Ms. Vo and

other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, ECU failed to accurately list the total number of hours worked by Ms. Vo and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), ECU willfully failed to maintain accurate payroll records for Ms. Vo 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, ECU 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/or meal period start and end times for Ms. Vo and other aggrieved employees in violation of section 1198. Furthermore, in light of ECU's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, ECU kept no records of meal start and end times for second meal periods.

Because ECU failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Vo 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. Vo 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. Vo 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, ECU failed to pay Ms. Vo and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Vo 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, ECU 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 section 201. For example, ECU terminated Ms. Vo on or about February 6, 2024; however, she received her final paycheck by mail about one (1) day later. Thus, ECU failed to pay Ms. Vo her final wages immediately, in violation of California Labor Code section 201.

Additionally, ECU willfully failed to pay Ms. Vo and other aggrieved employees who are no longer employed by ECU all their earned wages, 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 ECU's employ.

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

ECU's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Vo and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l). Ms. Vo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

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

Accordingly, Ms. Vo 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. Vo, 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 ECU 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. Vo 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:

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

Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

Sairah Budhwani

Copy: EXCITE CREDIT UNION (via U.S. Certified Mail)

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

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2 I am employed in the State of California, County of Los Angeles. I am over the age of
3 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1860
Los Angeles, California 90067.

4 On **July 20, 2026**, I served the document described as **FIRST AMENDED**
5 **CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE**
6 **PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698,**
7 **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:

7 Anthony Ocegüera
AOcegüera@ohaganmeyer.com
8 O'Hagan Meyer
One Embarcadero Center, Suite 2100
9 San Francisco, CA 94111
Ph: 916.884.0752

Attorneys for Defendant
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- 10
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13 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
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15 familiar" with this firm's practice of collection and processing correspondence for
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- 16 ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
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- 18 ☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted
19 electronically via OneLegal eService to the individuals listed above, as they exist on
that database. This will constitute service of the document(s).

20
21 I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct. Executed on **July 20, 2026**, at Los Angeles, California.

22
23 Sophia Flores
Type/Print Name



Signature