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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JAMILA REVILL on behalf of all others
similarly situated,

Plaintiff,

v.

CLEARCHOICE MANAGEMENT
SERVICES, LLC, a Colorado limited
liability company, and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 24STCV27757

**PLAINTIFF'S REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Private Attorneys General Act, Labor Code § 2698 *et seq.* ("PAGA") Penalties for Failure to Pay Overtime Wages;
2. PAGA Penalties for Failure to Pay Minimum Wages;
3. PAGA Penalties for Failure to Provide Compliant Meal Breaks or Pay Premiums;
4. PAGA Penalties for Failure to Provide Compliant Rest Breaks or Pay Premiums;
5. PAGA Penalties for Failure to Reimburse for Necessary Business Expenses;
6. PAGA Penalties for Failure to Provide and Maintain Accurate Itemized Wage Statements;
7. PAGA Penalties for Failure to Pay Timely Wages; and
8. PAGA Penalties for Failure to Pay Wages Due at Separation of Employment.

Plaintiff JAMILA REVILL ("Plaintiff"), as a representative of the State of California,
the Labor and Workforce Development Agency ("LWDA"), and all other similarly situated

current and former aggrieved employees, hereby complains and alleges as follows:

INTRODUCTION

1. This action is brought by Plaintiff on behalf of all other similarly situated Aggrieved Employees (as defined below) against Defendant CLEARCHOICE MANAGEMENT SERVICES, LLC and DOES 1 through 100 (collectively, “Defendant”) on a representative action basis pursuant to the Private Attorneys General Act (“PAGA”), Labor Code section 2698, *et seq.*

2. The term “Aggrieved Employees” is defined as all similarly situated, non-exempt, current and/or former employees of Defendant who were employed by Defendant in the State of California during the PAGA Period.

3. The “PAGA Period” is defined as one (1) year from the filing of Plaintiff’s PAGA Notice Letter to the LWDA through the present date and on-going. The PAGA Notice Letter was filed with the LWDA on August 19, 2024. A true and correct copy of the PAGA Notice Letter is attached hereto as **Exhibit 1**. Defendant’s violations of California’s wage and hour laws, as described more fully below, have been ongoing throughout the PAGA Period. Plaintiff reserves the right to amend this complaint to reflect a different PAGA Period as further discovery is conducted.

4. As described in further detail below, during the PAGA period, Aggrieved Employees were subjected to unlawful conduct by Defendant including, *inter alia*, violations of California’s wage and hour laws, including but not limited to California’s Labor Code and the Industrial Welfare Commission (“IWC”)’s applicable Wage Orders.

5. Plaintiff, on behalf of the Aggrieved Employees, seeks and award of statutory penalties pursuant to PAGA against Defendant for its violations of numerous Labor Code provisions, including but not limited to sections 201, 202, 203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, and 2802 for: (1) failure to pay overtime wages and failure to pay the correct rate of overtime; (2) failure to pay minimum wages; (3) failure to provide legally-compliant meal periods and/or pay meal period premiums; (4) failure to provide legally-compliant rest periods and/or pay rest period

1 premiums; (5) failure to reimburse for necessary business expenses; (6) failure to provide
2 accurate itemized wage statements; (7) failure to pay timely wages based on the foregoing; and
3 (8) failure to pay all wages due to former employees at their time of separation.

4 6. Plaintiff does not bring this action for any individual claims. Plaintiff only brings
5 this action on a representative basis. Plaintiff does not assert any individual PAGA claims in
6 this Complaint.

7 7. At all relevant times herein, Defendant has consistently maintained and enforced
8 the following unlawful policies and practices against Plaintiff and the Aggrieved Employees
9 during the PAGA Period:

- 10 a. Willfully failing to pay all overtime wages due to the Aggrieved
11 Employees;
- 12 b. Willfully failing to calculate the correct rate of overtime for the
13 Aggrieved Employees;
- 14 c. Willfully failing to pay all minimum wages due to the Aggrieved
15 Employees;
- 16 d. Willfully failing to record all actual hours worked by Aggrieved
17 Employees' due to recording hours in such a way that fails to capture all
18 actual hours worked;
- 19 e. Willfully failing to compensate Aggrieved Employees for all hours
20 worked, including time spent performing off-the-clock work tasks;
- 21 f. Willfully failing to permit and/or authorize Aggrieved Employees to take
22 legally-compliant meal periods, or else provide premium compensation in
23 lieu thereof;
- 24 g. Willfully failing to permit and/or authorize Aggrieved Employees to take
25 legally-compliant rest periods, or else provide premium compensation in
26 lieu thereof;
- 27 h. Willfully failing to reimburse Aggrieved Employees for all necessary
28 business expenses incurred in the discharge of their duties;

- i. Willfully failing to provide and maintain accurate, itemized wage statements to Aggrieved Employees;
- j. Willfully failing to timely pay the Aggrieved Employees all wages, including meal and rest period premiums and overtime wages, when due and on their regular payday;
- k. Willfully failing to pay all wages due upon separation of employment to Aggrieved Employees whose employment with Defendant has terminated during the PAGA Period;

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the causes of action alleged in this complaint as a Court of general subject matter jurisdiction and is not otherwise excluded from exercising subject matter jurisdiction over this action. The penalties recoverable collectively amongst all Aggrieved Employees do not exceed five million dollars (\$5,000,000.00). Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, the IWC's applicable Wage Orders, California's Code of Civil Procedure ("CCP"), and the California Rules of Court.

9. Defendant, upon information and belief, is a Colorado limited liability company headquartered in the State of Colorado, located at 8350 E. Crescent Parkway, Suite 300, Greenwood Village, Colorado 80111.

10. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, as it has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

11. At relevant times, Defendant was and is, an "employer" of Plaintiff and the Aggrieved employees, as that term is defined in all applicable California laws and statutes. At all relevant times, Defendant employed individuals that lived in and/or worked in the State of California, including the County of Los Angeles.

12. Venue is proper in this judicial district and the County of Los Angeles pursuant to CCP sections 295 and 395.5 because the majority of the acts and omissions alleged herein relating to Plaintiff and the Aggrieved Employees took place in the State of California, County of Los Angeles. Upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, including the County of Los Angeles.

THE PARTIES

13. At all relevant times, Plaintiff was and is a resident of Los Angeles, California. Plaintiff was hired by Defendant sometime in 2023 until her last day of work in or around May 2024. Plaintiff was employed by Defendant in a non-exempt, hourly position during the PAGA Period.

14. The Aggrieved Employees consist of identifiable, current, and/or formerly similarly situated persons who worked for Defendant in California during the PAGA Period.

15. By way of this action, Plaintiff also seeks to represent the State of California and the LWDA. Plaintiff is only seeking to represent the State of California and this action is intended to be a representative action.

16. DOES 1 through 100 (“DOES Defendants”) are sued herein under fictitious names pursuant to CCP section 474. The identity of the DOES Defendants is unknown to Plaintiff as Plaintiff does not, at this time, know the true names or capacities of the DOES Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege their true names and capacities once ascertained. Plaintiff is informed and believes, and thereon alleges, that each DOES Defendant is highly responsible in some manner for the events and happenings referred to herein, and legally caused the injuries and damages alleged in this Complaint.

17. Plaintiff is informed and believes and thereon alleges that each and every Defendant, including the DOES Defendants, was the authorized agent, principal, partner, joint venturer and/or guarantor, actual or ostensible, of each and every other Defendant; and that each and every Defendant had full authority to do as alleged herein, unless alleged otherwise. Furthermore, each and every Defendant was operating within the course and scope of their agency, or in a principal, partner, joint venturer, and/or guarantor, actual or ostensible,

relationship with each and every other Defendant during the course of events described herein, unless alleged otherwise.

PAGA ADMINISTRATIVE PREREQUISITE

18. Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided for under PAGA, Labor Code section 2698 *et seq.*, to the extent permitted by law, as an Aggrieved Employee who was employed by Defendant and did not receive all regular, minimum, and overtime wages due; was not provided compliant meal or rest periods and/or did not receive premium compensation in lieu thereof; did not receive reimbursements for necessary business expenses, was not provided accurate itemized wage statements; did not receive timely wages; and did not receive all wages owed upon termination of employment.

19. Pursuant to Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action under the PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated; and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

20. On August 19, 2024, prior to the filing of this Complaint, Plaintiff gave written notice of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3 (“PAGA Notice Letter”). This PAGA Notice Letter was sent via certified mail to Defendant, and was submitted to the LWDA by electronically filing the PAGA Notice Letter via the Department of Industrial Relations’ website. Plaintiff was given an LWDA case number of LWDA-CM-1046194-24.

21. More than sixty-five (65) days have elapsed since Plaintiff submitted her August 19, 2024 PAGA Notice Letter to the LWDA and Defendant, and the LWDA has not provided notice to Plaintiff of its intent to investigate the alleged violations. Also, Plaintiff has not received notice of Defendant’s intent to cure any of the alleged violations. Accordingly, Plaintiff has satisfied the administrative prerequisites for filing this action.

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1 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 22. Plaintiff and Aggrieved Employees are, and at all times during the PAGA Period
3 were, “non-exempt employees” within the meaning of the California Labor Code and the
4 applicable IWC Wage Orders. Defendant is, and at all times during the PAGA Period was, an
5 “employer” within the meaning of the California Labor Code and the applicable IWC Wage
6 Orders.

7 23. Defendant owns and operates dental facilities in Los Angeles, California.
8 Plaintiff and Aggrieved Employees were and are non-exempt hourly employees of Defendant
9 who worked five (5) or more hours per shift during the PAGA Period.

10 24. During all relevant times, Defendant had a practice of requiring Plaintiff and the
11 Aggrieved Employees to come in before the commencement of their scheduled shift time to
12 complete pre-shift tasks before clocking in. During all relevant times, Defendant also required
13 Plaintiff and the Aggrieved Employees to stay past their scheduled end time to complete post-
14 shift tasks after clocking out. Accordingly, Plaintiff and the Aggrieved Employees were not
15 compensated for this extra time that did not occur during their scheduled shift, which amounted
16 to off-the-clock (“OTC”) work.

17 25. During all relevant times, Defendant had a policy and practice of requiring
18 Plaintiff and the Aggrieved Employees to work more than eight hours in one day, 40 hours in
19 one week, and/or seven straight workdays in a workweek.

20 26. Despite the foregoing, during all relevant times, Defendant did not pay Plaintiff
21 and the Aggrieved Employees correct overtime wages for all overtime hours worked, and/or did
22 not pay them at the correct rate of overtime. To illustrate, Defendant had a practice of paying
23 bonuses to all of its employees, including referral and production bonuses. However, when
24 calculating the overtime rate for Plaintiff and the Aggrieved Employees, Defendant did not
25 incorporate these bonuses into its overtime rate calculation to reflect the correct adjusted rate of
26 overtime.

27 27. During all relevant times, Defendant had a practice of requiring Plaintiff and the
28 Aggrieved Employees to perform work tasks while they were clocked out for their 30-minute

1 meal periods. The reason was due to the chronic understaffing of Defendant's dental facilities
2 and employee workload. This resulted in Plaintiff and the Aggrieved Employees who worked
3 shifts of five hours or more receiving meal periods that were interrupted, late (not provided
4 prior to the start of their fifth hour of work), short (less than 30 minutes), or missed entirely.
5 Despite the foregoing, Defendant did not pay meal break premiums to Plaintiff or the Aggrieved
6 Employees for each shift in which they had an interrupted, late, short, or missed meal period.

7 28. During all relevant times, Defendant also had a practice of requiring Plaintiff and
8 the Aggrieved Employees to perform work tasks during their rest periods due to the chronic
9 understaffing of Defendant's dental facilities and employee workload. This resulted in Plaintiff
10 and the Aggrieved Employees receiving rest periods that were interrupted, late (not given
11 during each four hours of work or major fraction thereof), short (less than 10 minutes), or
12 missed entirely. Despite the foregoing, Defendant did not pay rest break premiums to Plaintiff
13 or the Aggrieved Employees for each instance in which they had an interrupted, late, short, or
14 missed rest period.

15 29. During all relevant times, Defendant also had a policy of requiring Plaintiff and
16 the Aggrieved Employees to perform work tasks while OTC, including but not limited to
17 attending company meetings, making work-related phone calls, and perform work-relating
18 driving tasks.

19 30. With regard to the work-related phone calls, during all relevant times, Defendant
20 required Plaintiff and the Aggrieved Employees to use their personal cell phones for these
21 work-related calls. Despite this fact, Defendant did not provide or offer Plaintiff and the
22 Aggrieved Employees with a company phone, nor did Defendant compensate them with a
23 reasonable percentage of their cell phone bill.

24 31. With regard to performing work-related driving tasks, during all relevant times,
25 Defendant required Plaintiff and the Aggrieved Employees to use their personal vehicles for
26 work-related activities. Despite this fact, Defendant did not compensate Plaintiff and the
27 Aggrieved Employees for the mileage expenses they incurred in carrying out these tasks.

28 32. Pursuant to its policies and practices regarding OTC work, at all relevant times,

Defendant engaged in the detrimental rounding, editing, manipulation, and/or failure to accurately track the time entries for all hours worked of Plaintiff and the Aggrieved Employees; which resulted in the recording of their time entries to show less hours than actually worked and the incorrect overtime hours actually incurred.

33. Based on the foregoing, during all relevant times, Plaintiff and the Aggrieved Employees were not paid timely wages for all hours worked at the time that their wages were owed. Specifically, they were not compensated for all wages owed due to Defendant's: (a) failure to compensate for all OTC work; (b) failure to compensate for all overtime hours worked; (c) failure to calculate the correct rate of overtime; and (d) failure to issue meal and rest period premiums.

34. Based on the foregoing, it also follows that all Aggrieved Employees whose employment with Defendant was terminated during the relevant time frame were not paid all wages due and owing at the time of their separation, including: (a) compensation for all OTC work; (b) compensation for all overtime hours worked at the correct overtime rate; and (c) premium compensation for meal and rest periods which were interrupted, short, late, and/or missed.

35. As a result of Defendant's policies and practices discussed above, Defendant also failed to issue accurate, itemized wage statements to Plaintiff and the Aggrieved Employees because the wage statements furnished by Defendant at all relevant times did not include all wages and premiums owed, accurate rates of overtime, accurate number of hours worked, accurate gross and net wages, and the accurate corresponding number of hours worked at each hourly rate.

FIRST CAUSE OF ACTION
PAGA Penalties for Failure to Pay Overtime Wages
for Violation of Labor Code §§ 510 & 1198
and Section 3 of the Applicable Wage Order

36. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

37. Labor Code section 510 provides that any work in excess of eight hours on any

1 day, 40 hours in any work week, as well as all hours worked on the seventh consecutive day of
2 a workweek, shall be compensated at the rate of no less than 1.5 times the regular rate of pay.
3 *See also* Lab. Code § 1198; Section 3(A) of the applicable IWC Wage Order.

4 38. Employees must be paid for all “hours worked.” “Hours worked” means “the
5 time during which an employee is subject to the control of an employer and includes all the time
6 the employee is suffered or permitted to work, whether or not required to do so.” Section 2(K)
7 of the Applicable Wage Order; *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.
8 4th 833; *Frlekin v. Apple Inc.*, (2020) 8 Cal. 5th 1038, 1046.

9 39. When determining whether an employee is subject to an employer’s control for
10 the purpose of deciding whether an activity is compensable, courts consider whether an activity
11 is “required”, which includes both an activity that is “strictly required”, as well as an activity
12 that is “practically required”. *Frlekin, supra*, 8 Cal.5th at 1054-1055. The mandatory nature of
13 an activity is a factor to consider, as well as whether the activity primarily benefits the
14 employee or the employer, and whether the activity is enforced through disciplinary measures.
15 *Id.*, at 1056.

16 40. Notably, there is no *de minimis* defense for such time. *Troester v. Starbucks*
17 *Corp.*, 5 Cal.5th 829 (2018) (the California Supreme Court held that, in light of new
18 technologies allowing time-tracking with specificity, the *de minimis* principle was not
19 applicable in the context of an alleged policy requiring employees to work minutes off the clock
20 routinely).

21 41. Labor Code section 558(a), imposes civil penalties on employers for violating
22 “any provision regulating hours and days of work” of fifty dollars (\$50) for the initial violation
23 and one hundred dollars (\$100) for each subsequent violation “for each underpaid employee for
24 each pay period for which the employee was underpaid in addition to an amount sufficient to
25 recover underpaid wages.”

26 42. As set forth above, Defendant had a policy and practice of requiring Plaintiff and
27 the Aggrieved Employees to work more than eight hours in one day, 40 hours in one week,
28 and/or seven straight workdays in a workweek.

1 43. Also as set forth above, Defendant’s policies and practices of requiring Plaintiff
2 and the Aggrieved Employees to perform OTC work also resulted in them working more than
3 eight hours in one day, 40 hours in one week, and/or seven straight workdays in a workweek.
4 Specifically, Defendant had policies and practices in place that required Plaintiff and the
5 Aggrieved Employees to perform OTC work before clocking in, after clocking out, and/or
6 during their meal periods during which they were clocked out. This OTC work included but is
7 not limited to performing pre-shift tasks, post-shift tasks, tasks during their breaks due to
8 chronic understaffing and employee workload, and other OTC tasks such as attending company
9 meetings, making work-related phone calls, and perform work-relating driving tasks.

10 44. These OTC tasks constituted compensable time because they were tasks that
11 were performed by Plaintiff and the Aggrieved Employees while subject to Defendant’s control,
12 which were required by Defendant as strictly and practically necessary in order to remain
13 employed by Defendant.

14 45. Pursuant to its policies and practices regarding OTC work, Defendant engaged in
15 the detrimental rounding, editing, manipulation, and/or failure to accurately track the time
16 entries of all hours worked of Plaintiff and the Aggrieved Employees; which resulted in the
17 recording of their time entries to show less hours than actually worked and/or the incorrect
18 overtime hours actually incurred.

19 46. Based on the foregoing, Defendant failed to compensate Plaintiff and the
20 Aggrieved Employees for all overtime hours actually worked.

21 47. Moreover, Defendant failed to calculate the correct overtime rate for Plaintiff
22 and the Aggrieved Employees, due to Defendant’s policy and practice of not incorporating their
23 appropriate referral and production bonuses when calculating their overtime rate. Under
24 California law, both of these bonuses need to be included in an employee’s adjusted rate of pay.
25 *Alvarado v. Dart Container Corporation* (2018) 4 Cal.5th 542 (non-discretionary bonuses must
26 be calculated into the employee’s regular rate of pay for the purpose of overtime rate
27 calculation); *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal App.4th 893, 904-
28 905; 29 C.F.R. § 778.210.

48. Defendant knew or should have known that Plaintiff and the Aggrieved Employees incurred overtime hours, because Defendant required them to work more than eight hours in one day, 40 hours in one week, and/or seven straight workdays in a workweek. Defendant also knew or should have known that requiring Plaintiff and the Aggrieved Employees to perform OTC work would also result in them to work more than eight hours in one day, 40 hours in one week, and/or seven straight workdays in a workweek.

49. Based on the foregoing, Defendant's failure to pay all overtime wages owed at the correct overtime rate to Plaintiff and the Aggrieved Employees amounts to violations of Labor Code sections 510 and 1198, and thus Defendant is subject to penalties pursuant to PAGA.

50. As a result of the unlawful acts of Defendant, Plaintiff, the LWDA, and the Aggrieved Employees, seeks to recover PAGA penalties from Defendant in an amount according to proof at trial, and attorneys' fees and costs pursuant to Labor Code section 2699(g), CCP section 1021.5, and any other statutory basis.

SECOND CAUSE OF ACTION
PAGA Penalties for Failure to Pay Minimum Wages
for Violation of Labor Code §§ 1194 & 1197
and Section 4 of the Applicable IWC Wage Order

51. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

52. Pursuant to Labor Code section 1197, employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law.

53. Pursuant to Labor Code section 1194, any employee receiving less than the legal minimum wage may recover in a civil action the unpaid balance of the full amount of the unpaid minimum wages, attorneys' fees, and costs of suit. Furthermore, Section 4 of the applicable Wage Order obligates employers to pay each employee minimum wages for all hours worked.

54. Labor Code section 1197.1 provides that “[a]ny employer . . . who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local

1 law, or by an order of the commission shall be subject to a civil penalty . . . as follows: (1) For
2 any initial violation that is intentionally committed, one hundred dollars (\$100.00) for each
3 underpaid employee for each pay period for which the employee is underpaid . . . [and] (2) For
4 each subsequent violation for the same specific offense, two hundred fifty dollars (\$250.00) for
5 each underpaid employee for each pay period for which the employee is underpaid regardless of
6 whether the initial violation is intentionally committed.”

7 55. Pursuant to Labor Code sections 1194.2, 1197.1, and 1199, in any action to
8 recover payment of wages less than the minimum wage, an employee shall be entitled to
9 recover liquidated damages in an amount equal to the unpaid wages and interest thereon.

10 56. These minimum wage standards apply to each hour employees work for which
11 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time
12 worked by an employee is unlawful, even if averaging an employee’s total pay over all hours
13 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
14 *Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Accordingly, where an employee experienced,
15 on a regular basis, not being paid for all hours worked under Labor Code section 1194, the
16 employee may recover minimum wages for the time for which they received no compensation
17 for not having received pay for such time.

18 57. Employees must be paid for all “hours worked.” “Hours worked” means “the
19 time during which an employee is subject to the control of an employer and includes all the time
20 the employee is suffered or permitted to work, whether or not required to do so.” Section 2(K)
21 of the Applicable Wage Order; *see also Mendiola, supra*, 60 Cal. 4th 833; *Frlekin, supra*, 8 Cal.
22 5th 1038, 1046.

23 58. When determining whether an employee is subject to an employer’s control for
24 the purpose of deciding whether an activity is compensable, courts consider whether an activity
25 is “required”, which includes both an activity that is “strictly required”, as well as an activity
26 that is “practically required”. *Frlekin, supra*, 8 Cal.5th at 1054-1055. The mandatory nature of
27 an activity is a factor to consider, as well as whether the activity primarily benefits the
28 employee or the employer, and whether the activity is enforced through disciplinary measures.

1 *Id.*, at 1056.

2 59. Notably, there is no *de minimis* defense for such time. *Troester, supra*, 5 Cal.5th
3 829 (2018) (the California Supreme Court held that, in light of new technologies allowing time-
4 tracking with specificity, the *de minimis* principle was not applicable in the context of an
5 alleged policy requiring employees to work minutes off the clock routinely).

6 60. Here, Defendant failed to compensate Plaintiff and the Aggrieved Employees for
7 all hours worked. Specifically, Defendant had policies and practices in place that required
8 Plaintiff and the Aggrieved Employees to perform OTC work before clocking in, after clocking
9 out, and/or during their meal periods during which they were clocked out. This OTC work
10 included but is not limited to performing pre-shift tasks, post-shift tasks, tasks during their
11 breaks due to chronic understaffing and employee workload, and other OTC tasks such as
12 attending company meetings, making work-related phone calls, and perform work-relating
13 driving tasks.

14 61. These OTC tasks constituted compensable time because they were tasks that
15 were performed by Plaintiff and the Aggrieved Employees while subject to Defendant's control,
16 which were required by Defendant as strictly and practically necessary in order to remain
17 employed by Defendant.

18 62. Pursuant to its policies and practices regarding OTC work, Defendant engaged in
19 the detrimental rounding, editing, manipulation, and/or failure to accurately track the time
20 entries Plaintiff and the Aggrieved Employees; which resulted in the recording of their time
21 entries to show less hours than actually worked and the incorrect overtime hours actually
22 incurred.

23 63. Despite the foregoing, Defendant failed to compensate Plaintiff and the
24 Aggrieved Employees for all hours spent performing these OTC tasks when they were subject
25 to Defendant's control.

26 64. As set forth above, Defendant also failed to compensate Plaintiff and the
27 Aggrieved Employees for all overtime hours worked at their correct overtime rate, due to
28 Defendant's policy and practice of not incorporating their appropriate referral and production

bonuses when calculating their overtime rate.

65. As a result of the foregoing, this caused Plaintiff and the Aggrieved Employees to receive less than the full minimum wages they were owed. “If an employer . . . can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for ‘all the time’ worked.” *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 660-661.

66. Based on the foregoing, Defendant’s failure to pay Plaintiff and the Aggrieved Employees all minimum wages owed for all actual time that they were subject to Defendant’s control amounts to violations of Labor Code sections 1194 and 1197, and thus Defendant is subject to penalties pursuant to PAGA.

67. As a result of the unlawful acts of Defendant, Plaintiff, the LWDA, and the Aggrieved Employees, seeks to recover PAGA penalties from Defendant in an amount according to proof at trial, and attorneys’ fees and costs pursuant to Labor Code section 2699(g), CCP section 1021.5, and any other statutory basis.

THIRD CAUSE OF ACTION

PAGA Penalties for Failure to Provide Compliant Meal Breaks or Pay Premiums for Violation of Labor Code §§ 226.7 and 512 and Section 11 of the Applicable Wage Order

68. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

69. California Labor Code section 516 provides that the IWC may adopt working condition orders with respect to meal breaks for any workers in California. *See also* Lab. Code § 1198.

70. Pursuant to Labor Code section 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. *Id.* at subd. (a). However, if the total work period for that day is less than six hours, then the meal period may be waived by mutual consent. *Id.*; *see also* section 11(A) and (C) of the applicable Wage Order.

71. California Labor Code section 226.7(a) provides that no employer shall require

an employee to work during a meal period mandated by an applicable statute, regulation, standard, or order of the IWC.

72. The first meal period must start prior to the end of the employee's fifth hour of work if the employee is working less than ten (10) hours. *Brinker Restaurant Corp. v Superior Court* (2012) 53 Cal. 4th 1004, 1041. During the meal period, the employee is to be completely free of the employer's control and must not be required to perform any work for the employer. *Id.* at 1040-1041.

73. If an employer fails to provide a legally compliant, duty-free meal period, the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. *See* Lab. Code § 226.7(c); Section 11(B) of the applicable Wage Order.

74. Here, Defendant violated and continues to violate Labor Code section 512 and Section 11 of the applicable Wage Order by, among other things, failing to provide and schedule 30-minute, timely, duty-free meal breaks on or before the fifth hour of work for Plaintiff and the Aggrieved Employees; and failing to advise them of their meal break rights with respect to the timing and entitlement of meal breaks. Specifically, Plaintiff and the Aggrieved Employees' meal periods were frequently late, short, missed, or interrupted due to chronic understaffing and employee workload.

75. Despite the foregoing, Defendant failed to pay Plaintiff and the Aggrieved Employees a meal period premium at the applicable rate for each shift during which their meal periods were interrupted, short, late, or missed, as required by Labor Code section 226.7(c).

76. Based on the foregoing, Defendant's failure to provide legally-compliant meal periods and/or pay premiums in lieu thereof amounts to violations of Labor Code sections 226.7 and 512, and thus Defendant is subject to penalties pursuant to PAGA.

77. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff, the LWDA, and the Aggrieved Employees, seeks to recover PAGA penalties from Defendant in the amount of one hundred dollars (\$100.00) for Defendant's initial violations and two hundred dollars (\$200.00) per pay period for each subsequent violation; in an amount according to proof at trial.

1 Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699(g), CCP
2 section 1021.5, and any other statutory basis.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Provide Compliant Rest Breaks or Pay Premiums**
5 **for Violation of Labor Code § 226.7**
6 **and Section 12 of the Applicable Wage Order**

7 78. Plaintiff re-alleges and incorporates by reference each and every allegation set
8 forth in the preceding paragraphs.

9 79. California Labor Code section 516 provides that the IWC may adopt working
10 condition orders with respect to rest breaks for any workers in California. *See also* Lab. Code §
11 1198.

12 80. Under Labor Code section 226.7, if an employer maintains a uniform policy that
13 does not authorize and permit the amount of rest time on the schedule called for under the law
14 (as specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is
15 liable." The *Brinker* Court explained in the context of rest breaks that employer liability
16 attaches from adopting an unlawful policy:

17 An employer is required to authorize and permit the amount of rest
18 break time called for under the wage order for its industry. If it does
19 not—if, for example, it adopts a uniform policy authorizing and
20 permitting only one rest break for employees working a seven-hour
21 shift when two are required—***it has violated the wage order and is***
22 ***liable.***

23 *Brinker, supra*, 53 Cal.4th at 1033 (emphasis added).

24 81. Here, Defendant did not authorize Plaintiff and the Aggrieved Employees to take
25 compliant rest breaks. Specifically, Plaintiff and the Aggrieved Employees' rest breaks were
26 frequently late, short, missed, or interrupted because Defendant was chronically understaffed
27 and due to employee workload.

28 82. Despite the foregoing, Defendant never paid any rest break premiums to Plaintiff
and the Aggrieved Employees for each instance in which they did not receive a rest break in

1 compliance with the Labor Code and Section 12 of the applicable Wage Order.

2 83. Based on the foregoing, Defendant's failure to provide legally-compliant rest
3 periods and/or pay premiums in lieu thereof amounts to violations of Labor Code section 226.7,
4 and thus Defendant is subject to penalties pursuant to PAGA.

5 84. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff, the LWDA,
6 and the Aggrieved Employees, seeks to recover PAGA penalties from Defendant in the amount
7 of one hundred dollars (\$100.00) for Defendant's initial violations and two hundred dollars
8 (\$200.00) per pay period for each subsequent violation; in an amount according to proof at trial.
9 Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699(g), CCP
10 section 1021.5, and any other statutory basis.
11
12

13 **FIFTH CAUSE OF ACTION**
14 **PAGA Penalties for Failure to Reimburse for Necessary Business Expenses**
15 **for violation of Labor Code § 2802**
16 **and Section 9 of the Applicable Wage Order**

17 85. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
18 as if fully alleged.

19 86. Under Labor Code section 2802, "[a]n employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
22 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful." This indemnification requirement applies when, *inter alia*,
24 employees must use their personal cell phones for work-related purposes. *Cochran v. Schwan's*
Home Service, Inc. (2014) 228 Cal.App.4th 1137, 1140.

25 87. Section 9 of the applicable Wage Order provides that "[w]hen tools or equipment
26 are required by the employer or are necessary to the performance of a job, such tools and
27 equipment shall be provided and maintained by the employer . . ."

28 88. In cases regarding work-related use of a personal cellphone, "[t]o show liability

1 under [Labor Code] section 2802, an employee need only show that he or she was required to
2 use a personal cell phone to make work-related calls, and he or she was not reimbursed.”
3 *Cochran, supra*, 228 Cal.App.4th at 1146. If use of the personal cell phone is mandatory,
4 reimbursement of a reasonable percentage of the employee’s cell phone bill is always required.
5 *Id.* at 1144.

6 89. Here, Plaintiff and the Aggrieved Employees were required to use their personal
7 cell phones for work-related purposes, including making work-related calls. Additionally,
8 Defendant also required Plaintiff and the Aggrieved Employees to use their personal vehicles to
9 perform work-related driving tasks.

10 90. Plaintiff and the Aggrieved Employees incurred expenses and/or losses while
11 using their personal cell phones and personal vehicles to perform these mandated work-tasks.
12 These expenses and/or losses were incurred as a direct consequence of the discharge of their
13 duties, and were reasonable and necessary because Defendant did not provide them with a
14 Defendant-owned company phone or company vehicle.

15 91. Although having knowledge of such personal cell phone and personal vehicle
16 usage, Defendant did not reimburse Plaintiff or the Aggrieved Employees for a reasonable
17 percentage of their cell phone bills and/or for mileage expenses incurred as business expenses,
18 as required by Labor Code section 2802. *See also Cochran, supra*, 228 Cal.App.4th at 1146.

19 92. Based on the foregoing, Defendant’s failure to reimburse Plaintiff and the
20 Aggrieved Employees for all necessary business expenses amounts to violations of Labor Code
21 section 2802, and thus Defendant is subject to penalties pursuant to PAGA.

22 93. Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff, the LWDA,
23 and the Aggrieved Employees, seeks to recover PAGA Penalties from Defendant in the amount
24 of one hundred dollars (\$100.00) for Defendant’s initial violations and two hundred dollars
25 (\$200.00) per pay period for each subsequent violation; in an amount according to proof at trial.
26 Plaintiff also seeks attorneys’ fees and costs pursuant to Labor Code sections 2802(b), 2802(c),
27 and 2699(g); CCP section 1021.5; and any other statutory basis.

28 ///

SIXTH CAUSE OF ACTION

**PAGA Penalties for Failure to Provide and Maintain Accurate Itemized Wage Statements
for Violation of Labor Code §§ 226(a), 1174(d)
and Section 7 of the Applicable Wage Order**

94. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

95. Labor Code section 226, subdivision (a), requires that “at the time of each payment of wages,” employers must furnish employees with “an accurate itemized statement” that includes, *inter alia*, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

96. Premium pay constitutes “wages”, as that term is used in the Labor Code. *Naranjo v. Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 118, 121 (premiums are wages that can be the basis of derivative claims for wage statement penalties).

97. An employer has an affirmative duty to track employee’s hours worked and meal periods. See Section 7(A) of the applicable wage order (“Every employer shall keep accurate information with respect to each employee including . . . time records showing when the employee begins each work period[,] [m]eal periods[,] and total daily worked shall also be recorded.”)

98. Labor Code section 1174 requires employers to keep accurate payroll records. Labor Code section 1174.5 provides:

Any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174. . . shall be subject to a civil penalty of five hundred dollars (\$500).

99. Labor Code section 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

1 100. Pursuant to Labor Code section 226.3, any employer who violates section 226(a)
2 shall be subject to a civil penalty in the amount of two hundred and fifty dollars (\$250.00) per
3 employee per violation in an initial citation and one thousand dollars (\$1,000.00) per employee
4 for each violation in a subsequent citation, for which the employer fails to provide the employee
5 a wage deduction statement or fails to keep the records required in subdivision (a) of Section
6 226. *See Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal. App. 5th 667, 674-
7 675 (finding that Labor Code section 226.3 applies to all violations of Labor Code section
8 226(a)); *see also Magadia v. Wal- Mart Assocs.*, 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019)
9 (“the Court finds that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate
10 measure of civil penalties under PAGA” for a violation of Labor Code section 226(a)). The
11 civil penalties provided for in this section are in addition to any other penalty provided by law.

12 101. An employee is deemed to suffer injury if the employer fails to provide a wage
13 statement containing all of the required information set forth in Labor Code section 226(a). *See*
14 Lab. Code § 226(e)(2). Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or
15 prove that Defendant’s conduct in refusing to provide accurate and itemized wage statements
16 was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App.5th
17 773, 788; *see also Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (to
18 obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section
19 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d
20 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one
21 need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”);
22 *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013)
23 (“Plaintiff does not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under
24 § 2699(f) of PAGA.”)

25 102. As set forth above, Defendant did not compensate Plaintiff and the Aggrieved
26 Employees for all hours worked due to its unlawful policies and practices regarding OTC work,
27 overtime rate calculation, failure to issue meal and rest period premiums, and its unlawful
28 rounding and/or time entry manipulation.

1 103. Accordingly, the wage statements issued by Defendant to Plaintiff and the
2 Aggrieved Employees failed to include and/or itemize the correct amount of gross wages
3 earned, net wages earned, the applicable hourly rates in effect, overtime hours incurred, actual
4 hours incurred, all premiums owed during the pay period, and the corresponding number of
5 hours worked at each hourly rate in violation of Labor Code section 226(a).

6 104. Defendant knowingly and intentionally failed to provide Plaintiff and the
7 Aggrieved Employees wage statements in compliance with Labor Code section 226, because
8 said statements contained inaccurate gross wages earned, an inaccurate total number of hours
9 worked, inaccurate net wages earned, inaccurate applicable hourly rates in effect during the pay
10 period, and an inaccurate number of hours worked at each hourly rate.

11 105. Moreover, Defendant willfully failed to comply with Section 7 of the applicable
12 Wage Order and Labor Code section 1174 by failing to maintain the above-mentioned records,
13 including accurate records of all hours worked, all meal and rest period time entries, and all
14 premiums owed to Plaintiff and the Aggrieved Employees.

15 106. Defendant's failure to furnish accurate and complete itemized wage statements
16 has caused Plaintiff and the Aggrieved Employees to incur economic damages in that they were
17 not aware what they were owed and not paid appropriate wages at the appropriate rates. *See*
18 *Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up
19 the daily hours shown on the time cards or other records so that the employee must perform
20 arithmetic computations to determine the total hours worked during the pay period, the
21 requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F.
22 Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not
23 including, *inter alia*, total hours worked giving rise to claims under both section 226 and for
24 PAGA penalties); Lab. Code § 226(e)(2)(B) (clarifying that injury is established where the
25 wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where
26 employees cannot easily determine the gross or net wages earned by the employee during the
27 pay period).

28 107. Accordingly, because Defendant failed to include accurate and complete

1 information required by Labor Code section 226(a) on the wage statements it issued to Plaintiff
2 and the Aggrieved Employees, they are deemed to have suffered injury, per Labor Code section
3 226(e)(2)(B).

4 108. Based on the foregoing, Defendant's failure to provide and maintain accurate and
5 itemized wage statements amounts to violations of Labor Code sections 226 and 1174, and thus
6 Defendant is subject to penalties pursuant to PAGA.

7 109. As a result of the unlawful acts of Defendant, Plaintiff, the LWDA, and the
8 Aggrieved Employees, seeks to recover PAGA penalties from Defendant in an amount
9 according to proof at trial and attorneys' fees and costs pursuant to Labor Code sections
10 226(e)(1), 226.3, 1174.5, and 2699(g), CCP section 1021.5, and any other statutory basis.

11 **SEVENTH CAUSE OF ACTION**
12 **PAGA Penalties for Failure to Pay Timely Wages**
13 **for Violation of Labor Code § 204**

14 110. Plaintiff re-alleges and incorporates by reference each and every allegation set
15 forth in the preceding paragraphs.

16 111. Labor Code section 204 expressly requires that "[a]ll wages...earned by any
17 person in any employment are due and payable twice during each calendar month, on days
18 designated in advance by the employer as the regular paydays."

19 112. Premium pay constitutes "wages", as that term is used in the Labor Code.
20 *Naranjo, supra*, 13 Cal. 5th 93, 118 (premium pay is fairly understood as falling within the
21 Labor Code's general definition of wages).

22 113. Due to Defendant's failure to pay Plaintiff and the Aggrieved Employees
23 applicable wages at the time they were owed, including all minimum wages, regular wages,
24 overtime wages, and all meal and rest break period premiums owed, Defendant violated Labor
25 Code section 204 by failing to pay all wages due within seven days of the close of the payroll
26 period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist.
27 LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding that a failure to pay
28 rest period premiums can support claims under Labor Code sections 203 and 204).

114. Labor Code section 210(a) provides that "[i]n addition to, and entirely

1 independent and apart from, any other penalty provided in this article, every person who fails to
2 pay the wages of each employee as provided in Sections . . . 204 . . . shall be subject to a civil
3 penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to
4 pay each employee; (2) For each subsequent violation, or any willful or intentional violation,
5 two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount
6 unlawfully withheld.”

7 115. Based on the foregoing, Defendant’s faulty compensation policies and practices
8 amount to violations of Labor Code section 204, and thus Defendant is subject to penalties
9 pursuant to PAGA.

10 116. As a result of the unlawful acts of Defendant, Plaintiff, the LWDA, and the
11 Aggrieved Employees, seeks to recover PAGA penalties from Defendant in an amount
12 according to proof at trial, attorneys’ fees and costs, and interest pursuant to Labor Code
13 sections 210, 218.5, 218.6, 2699(g), and 2698 *et seq.*; CCP section 1021.5; and any other
14 statutory basis.

15 **EIGHTH CAUSE OF ACTION**

16 **PAGA Penalties for Failure to Pay Wages Due at Separation of Employment
for Violation of Labor Code §§ 201 and 202**

17 117. Plaintiff re-alleges and incorporates by reference each and every allegation set
18 forth in the preceding paragraphs.

19 118. Pursuant to Labor Code section 201, if an employer discharges an employee, the
20 employer is required to pay all compensation earned and unpaid immediately at the time of
21 discharge.

22 119. Pursuant to Labor Code section 202, if an at-will employee quits, the employee’s
23 wages are due no later than 72 hours thereafter, unless the employee has given 72 hours’ notice
24 of his or her intention to quit, in which case the employee is entitled to all wages owed at the
25 time of quitting.

26 120. Pursuant to Labor Code section 203, if an employer fails to pay the final wages
27 owed of an employee who is discharged or who quits, “the wages of the employee shall
28 continue as a penalty from the due date thereof at the same rate until paid or until an action is

commenced; but the wages shall not continue for more than 30 days.”

121. Premium pay constitutes “wages”, as that term is used in the Labor Code. *Naranjo, supra*, 13 Cal. 5th 93, 117-118 (“missed-break premium pay constitutes wages for purposes of Labor Code section 203, and so waiting time penalties are available under that statute if the premium is not timely paid”).

122. Due to Defendant’s faulty policies described above, Defendant violated Labor Code section 203 with respect to Plaintiff and certain Aggrieved Employees whose employment with Defendant was terminated during the relevant time period, by willfully failing to pay them all wages due upon the termination of their employment, including all unpaid minimum wages, regular wages, overtime wages, and meal and rest break premium wages, as required by Labor Code sections 201 and 202.

123. Based on the foregoing, Defendant’s faulty compensation policies and practices amount to violations of Labor Code sections 201 and 202, and thus Defendant is subject to penalties pursuant to PAGA.

124. As a result of the unlawful acts of Defendant, Plaintiff, the LWDA, and all Aggrieved Employees whose employment with Defendant was terminated during the PAGA Period; seeks to recover PAGA penalties from Defendant in an amount according to proof at trial, attorneys’ fees and costs, and interest pursuant to Labor Code sections 203, 218.5, 218.6, 2699(g), and 2698 *et seq.*; CCP section 1021.5; and any other statutory basis.

PRAYER FOR RELIEF

Wherefore, Plaintiff, the LWDA, and the Aggrieved Employees, prays for judgment against Defendant as follows:

1. An Order that this action may proceed and be maintained as a representative PAGA action;
2. For civil penalties for each Labor Code violation suffered by Plaintiff and the Aggrieved Employees, as provided by PAGA and according to proof;
3. Reasonable attorney’s fees and costs, pursuant to Labor Code sections 218.5, 226(e)(1), and 2699(g); CCP section 1021.5; and any other statutory basis or

pursuant to the California Rules of Court;

4. Exemplary and punitive damages;

5. Interest as allowed by law;

6. An order directing Defendant to take such affirmative steps as may be necessary and appropriate to correct the effect of its past unlawful acts and practices; and

7. For all such other and further relief as the Court may deem just and proper.

Dated: October 23, 2024

Respectfully Submitted,

**EMPLOYMENT RIGHTS LAWYERS, APC
LAW OFFICE OF TATIANA HERNANDEZ, P.C.**

Amir Seyedfarshi

Amir Seyedfarshi, Esq.

Tatiana Hernandez, Esq.

*Attorneys for Plaintiff, the Aggrieved Employees, and
the LWDA*

EXHIBIT 1



Employment Rights Lawyers, APC
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424-777-0964
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August 19, 2024

Via Online Filing with the LWDA & Certified Mail to Defendant

CLEARCHOICE MANAGEMENT SERVICES, LLC
Director of Human Resources
8350 E Crescent Pkwy, Suite 300
Greenwood Village, CO 80111

CLEARCHOICE MANAGEMENT SERVICES, LLC
C/O CT CORPORATION SYSTEM
330 N Brand Blvd,
Glendale, CA 91203

**Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)
Jamila Revill v. ClearChoice Management Services, LLC**

Dear Gentlepersons:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1), and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other order and remedies against you and your company.

Our office, alongside the Law Office of Tatiana Hernandez, P.C., represents Plaintiff Jamila Revill, (“Plaintiff”) and a proposed group (and subgroups, as defined below) of current and former Aggrieved Employees of Clear Choice Management LLC, a California corporation and its co-employers, successors in interest, and/or merged entities (“Defendant”) in connection with her PAGA representative claims for civil penalties, based on, without limitation, Defendant’s:

- (1) failure to pay for overtime wages in violation of Cal. Labor Code §§ 510, 1194, and

- 1198;
- (2) failure to pay the correct rate of overtime;
 - (3) failure to pay minimum wages and pay for all wages earned in violation of Labor Code §§204, 1194, and 1197;
 - (4) failure to provide timely and duty-free meal periods within the first five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours and/or pay meal period premiums for late meal breaks in violation of Labor Code §§226.7 and 512 and Section 11 of the applicable IWC Wage Order;
 - (5) failure to provide timely, duty-free rest periods for every four hours of work or major fraction thereof in violation of Labor Code § 226.7 and Section 12 of the applicable IWC Wage Order;
 - (6) failure to provide and maintain accurate itemized wage statements in violation of Cal. Labor Code §§ 226, 1174(d), and 1198.5 based upon Defendants' failure to include meal and rest break premiums in stating the total gross and net wages earned;
 - (7) failure to pay timely wages in violation of Cal. Labor Code §§ 204 and 210;
 - (8) failure to pay all wages upon separation of employment in violation of Labor Code §§ 201, 202, 203, 558, and 2699; and
 - (9) statutory penalties under California's Private Attorney General Act ("PAGA based upon the foregoing under Labor Code sections 2698 *et seq.*

In connection with her PAGA claims, Plaintiff seeks PAGA penalties from one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiff seeks to represent the following groups of Aggrieved Employees:

"Aggrieved Employees": All non-exempt individuals who are or were employed by ClearChoice Management Services, Inc. in the State of California and who worked one or more shifts of (3.5) hours or longer during the PAGA Period.

Plaintiff was employed by Defendant as a non-exempt employee from sometime in 2023 until her last day of work in or around May 2024. Throughout her employment, Plaintiff was subjected to a slew of wage and hour violations, including but not limited to, failure to receive legally-compliant meal and rest breaks, being required to perform off-the-clock work with no compensation, and not being paid properly for all hours worked. As a matter of fact, Plaintiff was required to do off-the-clock work without being compensated. Defendant had a practice of paying bonus to all their employees, however, the overtime rate of pay did not include the correct adjusted rate of overtime. The bonus paid to the employees included referral and production bonus. Under California law, both of these bonus need to be included in the adjusted rate of pay.

DEFENDANT'S OVERTIME VIOLATIONS

Labor Code § 510 provides that any work in excess of eight hours on any day, as well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at the rate of no less

than 1.5 times the regular rate of pay. *See also* Section 3(A) of IWC Wage Order No. 4.

Defendant had a policy and practice of paying bonuses to all their employees, including referral and production bonuses. However, the overtime rate of pay paid by Defendant to its employees did not incorporate these bonuses to reflect the correct adjusted rate of overtime. Under California law, both of these bonuses need to be included in the adjusted rate of pay. *Alvarado v. Dart Container Corporation* (2018) 4 Cal.5th 542 (non-discretionary bonuses must be calculated into the employee's regular rate of pay for the purpose of overtime rate calculation); *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal App.4th 893, 904-905; 29 C.F.R. §§ 778.210.

Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 4, Defendant did not pay Plaintiff and the Overtime Aggrieved Employees any overtime wages corresponding to the accurate calculation of one and a half times the regular rate of pay of Plaintiff and the Overtime Aggrieved Employees for all hours over 8 in a day. Defendant violated Labor Code § 510 by failing to pay Plaintiff and Aggrieved Employees the accurate overtime wages, including daily overtime and night shifts' overtime.

Here, the overtime rate received by Plaintiff and the Aggrieved employees was not an adjusted rate. With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. Section 207(e)). This requirement includes but is not limited to, commissions and nondiscretionary bonuses. (*See.*) Here, Plaintiff and the Aggrieved employees frequently received bonuses, and the rate of overtime did not include the calculation of the bonus in violation of *Ferra v. Lowes*.

Plaintiff is informed and believes, and based thereon alleges that Defendant had a policy or practice of requiring its employees to work more than (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late from work without being able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, editing and/or manipulation of time entries to show less hours than actually worked, and failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Defendant would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

DEFENDANTS' MINIMUM WAGE VIOLATIONS

Defendant had a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendant's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without

limitation, by requiring employees: to come early to work and leave late from work without being able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to attend company meetings off the clock, to make phone calls or drive while off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums.

Defendant violated, without limitation, Labor Code sections 204, 1194, and 1197, and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Plaintiff and other Aggrieved Employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Defendant would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, 2699 *et seq.*

DEFENDANT’S MEAL PERIOD VIOLATIONS

Labor Code § 512 requires employers to provide employees with a thirty (30) minute, uninterrupted, and duty-free meal period within the first five (5) hours of an employee’s shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute, uninterrupted, and duty-free meal period. Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for under the law (as specified in Section 11(A) of the applicable Wage Order), it has violated the wage order and is liable. *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004.

During each of their shifts, Plaintiff and the Meal Period Aggrieved Employees were precluded from taking their meal periods and/or were subjected to interrupted, short, or late meal periods. The reason varied and it was mainly because of the understaffing of the dental facilities. Moreover, Defendant has put in place a rounding policy for all meal periods entries. The rounding policy affects the correct timekeeping of Defendant’s employees, and therefore their meal breaks are not correctly registered. See *Donohue v. AMN Services, LLC* (SC S253677 February 25, 2021) holding that “Under California law, employers must generally provide employees with one 30-minute meal period that begins no later than the end of the fifth hour of work and another 30-minute meal period that begins no later than the end of the tenth hour of work. (Lab. Code, § 512, subd. (a); Industrial Welfare Commission (IWC) wage order No. 4-2001, § 11(A) (Wage Order No. 4).) If an employer does not provide an employee with a compliant meal period, then ‘the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal . . . period is not provided.’ (Lab. Code, § 226.7, subd. (c); Wage Order No. 4, § 11(B).)”

Defendant violated and continues to violate Labor Code section 512 and IWC Wage Order 4-2002 section 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work to Meal Period Aggrieved Employees and failing to advise all them of their meal period rights concerning the timing of meal periods, failing to provide them with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failing to pay meal period premiums for non-compliant meal periods. As a result, Plaintiff and the Meal Period Aggrieved Employees are entitled to damages in the amount of unpaid meal period premiums owed. Defendant is also liable for civil penalties pursuant to Labor Code sections 558

and 2699 *et seq.*

DEFENDANT’S REST PERIOD VIOLATIONS

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp., supra, 53 Cal.4th at 1033. (emphasis added).

Here, Defendant did not authorize or permit Plaintiff and the Rest Break Aggrieved Employees to take legally-compliant rest breaks during each 4 hours of work or a major fraction thereof due to chronic understaffing and workload. As a result, they were precluded from taking rest breaks and/or were subjected to interrupted, short, or late rest breaks. Based on the foregoing, Plaintiff and the Rest Period Aggrieved Employees are entitled to damages in the amount of unpaid meal period premiums owed. Defendant is also liable for civil penalties pursuant to Labor Code sections 558 and 2699 *et seq.*

DEFENDANTS’ WAGE STATEMENT VIOLATIONS

Labor Code section 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Here, Defendant’s wage statements did not include the correct rate of overtime, and correct amount of the overtime time pay, the correct amount of overtime hours worked, the correct amount of all hours worked or subject to Defendant’s control (due to employer-mandated off-the-clock work

and non-compliant meal periods and rest breaks), and all meal period and rest break premiums owed to Plaintiff and the Wage Statement Aggrieved Employees. Accordingly, the wage statements did not include the correct amount of gross wages and net wages earned, nor the applicable hourly rates in effect in violation of Labor Code section 226(a).

and *inter alia*, Defendants' failure to pay Plaintiff and the other Aggrieved Employees for all meal and rest break premiums), the wage statements issued by Defendants to Plaintiff and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that the employees were exempt).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendants failed to provide Plaintiff and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Plaintiff, and other Aggrieved Employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Defendant would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

DEFENDANT'S FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

Due to Defendants' failure to pay Plaintiff and the other Aggrieved Employees all meal and rest break period premiums owed, Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Defendant would be liable to Plaintiff and other Aggrieved Employees for civil penalties under Labor Code sections 558, 210, and 2699.

DEFENDANT’S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

abor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Here, due to Defendant’s faulty compensation policies described above, including its failure to pay for meal period and rest break premiums and unpaid and incorrect overtime wages, Defendant violated Labor Code section 203 as to for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees by willfully failing to pay them all of these wages due upon the termination of their employment. Consequently, Defendant is liable for waiting time penalties for having violated California Labor Code sections 201 and 202. Defendant is also liable for civil penalties pursuant to Labor Code sections 558 and 2699 *et seq.*

Defendant’s Failure to Indemnify Employees For All Necessary Expenditures or Losses Incurred In Direct Consequence of the Discharge Of Their Duties

Under Labor Code 2802, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” This indemnification requirement applies when employees must use their personal cell phones for work-related purposes. *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140. “Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.” *Id.*

Here, Plaintiff and the Aggrieved Employees were required by Defendant to use their personal cell phones every day to further business activities]. Defendant does not offer employees a company phone, nor does it reimburse employees for their work-related cell phone use. Therefore, Defendant has violated Labor Code Section 2802 and owes Plaintiff and the Aggrieved Employees a reasonable percentage of their cell phone bills and mileage expenses, in an amount to be proven at trial, as damages. Defendant is also liable for civil penalties pursuant to Labor Code section 2699 *et seq.*

Lastly, Defendant did not have in place a reimbursement policy for the mileage. When

Plaintiff and the Aggrieved Employees used their vehicle for business related activities, they were not reimbursed.

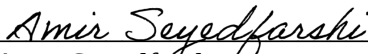
CONCLUSION

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California.

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendants seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff individually and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees. If Defendants are interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by September 3, 2024, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,


Amir Seyedfarshi, Esq.

EMPLOYMENT RIGHTS LAWYERS, APC