

SUMMONS ISSUED

Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
Ryan Tish (SBN 274284)
Ryan.Tish@capstonelawyers.com
Alexander Wallin (SBN 320420)
Alexander.Wallin@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Per local Rule, This case is assigned to
Judge Weil, Edward G, for all purposes.

Attorneys for Plaintiff Kamure Kizart

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

C24-03522

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

KAMURE KIZART, as an aggrieved
employee pursuant to the Private
Attorneys General Act (“PAGA”), on
behalf of the State of California and
other non-party Aggrieved
Employees,

Plaintiff,

vs.

PUBLIC HEALTH FOUNDATION
ENTERPRISES, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

1 Plaintiff Kamure Kizart, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on October 21, 2024, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

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

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff Kamure Kizart is a resident of San Pablo, Contra Costa County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
12 approximately July 2023 to April 2024. Plaintiff worked for Defendants as a Shelter
13 Specialist at their Brookside Shelter location in Richmond, California. Plaintiff typically
14 worked eight (8) hours or more per day, and five (5) days per week. At the time Plaintiff’s
15 employment with Defendants ended, she was compensated approximately \$19.00 per hour.
16 Plaintiff’s job duties included, without limitation, monitoring clients, cleaning, preparing
17 food, and monitoring the property.

18 7. On information and belief, Defendants required some employees, including
19 Plaintiff, to execute arbitration agreements at the time of their hire or during their
20 employment. On further information and belief, Defendants’ arbitration agreements were and
21 are both procedurally and substantively unconscionable. Specifically, Defendants presented
22 employees with an “Employee Handbook - Arbitration” (“Arbitration Agreement”) which had
23 to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was
24 among several documents presented to employees for signature during the orientation process.
25 Also, employees did not have a meaningful opportunity to negotiate the terms of the
26 Arbitration Agreement. Rather, they were provided to Defendants’ employees for them to
27 sign on a take-it or leave-it basis, along with other onboarding documents. Further,
28 Defendants did not set forth in the Arbitration Agreement or otherwise provide employees

1 with the rules which will govern the arbitration, instead forcing employees to seek this
2 information out on their own (“The rules for JAMS may be obtained from the Human
3 Resources department or can be found online at <http://www.jamsadr.org/>.”).

4 8. PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. was and is, upon
5 information and belief, a California corporation, and at all times hereinafter mentioned, an
6 employer whose employees are engaged throughout this county and the State of California.

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

11 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
12 were the partners, agents, owners, or managers of PUBLIC HEALTH FOUNDATION
13 ENTERPRISES, INC. at all relevant times.

14 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, PUBLIC HEALTH
16 FOUNDATION ENTERPRISES, INC. and/or DOES 1 through 10 (collectively, “Defendants”
17 or “PHFE”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
18 in concert with, each of the other co-Defendants and was acting within the course and scope of
19 such agency, employment, joint venture, or concerted activity with legal authority to act on
20 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
21 the official policy of Defendants.

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

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

PAGA REPRESENTATIVE ALLEGATIONS

14. Defendants are an organization providing program and support services to improve the health and well-being of communities, with a large number of locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at its corporate headquarters in City of Industry, California, for all non-exempt, hourly paid employees working for Defendants in California, including Plaintiff and other non-party Aggrieved Employees. At all relevant times, Defendants issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiff and other non-party Aggrieved Employees, regardless of their location or position.

15. In particular, Plaintiff and other non-party Aggrieved Employees, 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.

16. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in City of Industry, California which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

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

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

5 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
6 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
7 were not recorded.

8 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 receive certain wages for overtime compensation and that they were not receiving certain
11 wages for overtime compensation.

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

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

26 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or

1 payment of one (1) additional hour of pay at their regular rates of pay when they were not
2 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
3 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
4 provided with payment of one (1) additional hour of pay at their regular rates of pay when
5 they were not authorized and permitted to take a compliant rest period.

6 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive complete and accurate wage statements in accordance with California law. In
9 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
10 were not provided complete and accurate wage statements.

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

15 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that they were required to pay departing employees all vested vacation
17 wages that were owed to them at the end of their employment. In violation of the California
18 Labor Code, Defendants failed to pay Plaintiff and other non-party Aggrieved Employees all
19 vested vacation wages at the end of their employment, causing a forfeiture of vested vacation
20 wages.

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

27 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 timely payment of all wages earned upon termination of employment. In violation of the
2 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
3 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
4 meal and rest period premiums, and/or vested vacation wages, within permissible time
5 periods.

6 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive reimbursement for all business-related expenses and costs they incurred during the
9 course and scope of their employment and that they did not receive reimbursement of
10 applicable business-related expenses and costs incurred.

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

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

23 32. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
24 "any person who was employed by the alleged violator and personally suffered each of the
25 violations alleged."

26 33. Plaintiff and other current and former employees of Defendants are "aggrieved
27 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants'
28 current or former employees and each of the alleged violations were committed against them.

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

- 4 (a) The aggrieved employee shall give written notice by online filing
5 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
6 to the employer of the specific provisions of the California Labor Code
7 alleged to have been violated, including the facts and theories to support
8 the alleged violations.
- 9 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
13 employer and the aggrieved employee by certified mail that it does not
14 intend to investigate the alleged violation within sixty (60) calendar
15 days of the postmark date of the Employee’s Notice. Upon receipt of
16 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
17 five (65) calendar days of the postmark date of the Employee’s Notice,
18 the aggrieved employee may commence a civil action pursuant to
19 California Labor Code section 2699 to recover civil penalties in addition
20 to any other penalties to which the employee may be entitled.

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

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

1 and theories to support the alleged violation.

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

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

13 36. On October 21, 2024, Plaintiff provided written notice by online filing to the
14 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
15 Code alleged to have been violated, including facts and theories to support the alleged
16 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
17 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
18 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
19 Plaintiff PAGA Case Number LWDA-CM-1057436-24. A true and correct copy of Plaintiff's
20 written notice to the LWDA and Defendants dated October 21, 2024, is attached hereto as
21 "Exhibit 1."

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

25 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 510, 512(a),
28 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

1 39. Labor Code section 558(a) provides “[a]ny employer or other person acting on
2 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
3 provision regulating hours and days of work in any order of the Industrial Welfare
4 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
5 dollars (\$50) for each underpaid employee for each pay period for which the employee was
6 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
7 underpaid employee for each pay period for which the employee was underpaid” Labor
8 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
9 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
10 as a private attorney general, seeks assessment and collection of civil penalties under Labor
11 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
12 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
13 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
14 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
15 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
16 applicable IWC Wage Order.

17 40. Defendants, at all times relevant to this complaint, were employers or persons
18 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
19 Employees’ rights by violating various sections of the California Labor Code as set forth
20 above.

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

24 42. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
25 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public
26 interest as a private attorney general, seeks assessment and collection of civil penalties and
27 injunctive relief for herself, all other non-party Aggrieved Employees, and the State of
28 California against Defendants for violations of California Labor Code sections 201, 202, 204,

226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

44. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 226(a), 226.7, 227.3, 510, 512(a), 516, 1182.12, 1194, 1197, and 2802.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to authorize and

1 permit Plaintiff and other non-party Aggrieved Employees to take rest
2 periods, as set forth below;

3 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
4 IWC Wage Order for failure to provide accurate and complete wage
5 statements to Plaintiff and other non-party Aggrieved Employees, as set
6 forth below;

7 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
8 IWC Wage Order for failure to maintain payroll records, as set forth
9 below;

10 (g) Violation of Labor Code section 227.3 for failure to pay Plaintiff and
11 other non-party Aggrieved Employees all vested vacation time upon
12 termination, as set forth below;

13 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
14 during employment, as set forth below;

15 (i) Violation of Labor Code section 201 and 202 for failure to pay all
16 earned wages upon termination, as set forth below; and

17 (j) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
18 and other non-party Aggrieved Employees for all business expenses
19 necessarily incurred, as set forth below.

20 **FAILURE TO PAY OVERTIME**

21 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

22 46. Labor Code section 1198 makes it illegal to employ an employee under
23 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
24 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
25 shall be the . . . standard conditions of labor for employees. The employment of any employee
26 . . . under conditions of labor prohibited by the order is unlawful.”

27 47. California Labor Code section 1198 and the applicable IWC Wage Order
28 provide that it is unlawful to employ persons without compensating them at a rate of pay

1 either time-and-one-half or two-times that person's regular rate of pay, depending on the
2 number of hours worked by the person on a daily or weekly basis.

3 48. Specifically, the applicable IWC Wage Order provides that Defendants are and
4 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
5 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
6 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
7 (40) hours in a workweek.

8 49. The applicable IWC Wage Order further provides that Defendants are and were
9 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
10 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
11 An employee's regular rate of pay includes all remuneration for employment paid to, or on
12 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

13 50. California Labor Code section 510 codifies the right to overtime compensation
14 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
15 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
16 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
17 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
18 in a day on the seventh (7th) day of work.

19 51. During the relevant time period, Defendants willfully failed to pay all overtime
20 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
21 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
22 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
23 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
24 not recorded.

25 52. During the relevant time period, Defendants had, and continue to have, a
26 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
27 party Aggrieved Employees from recording hours worked that were outside of their scheduled
28 shifts in order to limit the amount of overtime employees could accrue. Defendants

1 implemented an overtime policy that states, in part, “Heluna Health policy requires that any
2 overtime . . . must be approved by an employee’s manager or supervisor before it is worked.”
3 On information and belief, this policy of limiting overtime, coupled with Defendants’
4 practices of single-staffing and/or understaffing and assigning heavy workloads (see *infra*),
5 led Plaintiff and other non-party Aggrieved Employees to work off-the-clock outside of their
6 scheduled shift times in order to complete their assigned tasks. For example, a few times per
7 month, Plaintiff worked off the clock prior to the start of her shifts assisting clients. As
8 another example, approximately once per week, Plaintiff worked after clocking out from her
9 shifts handling client issues, such as attending to client medical emergencies, filling out
10 incident reports, and/or waiting for the following shift’s employees to report to work before
11 she could leave. This work took 20 to 30 minutes on average, time for which Plaintiff was not
12 paid. As a further example, Defendants’ management called Plaintiff outside of her scheduled
13 shifts and/or on her days off to discuss work-related matters and ask questions about clients,
14 which took approximately one (1) hour per month. Finally, on approximately two (2)
15 occasions, Defendants’ management required that Plaintiff attend meetings in Pleasant Hill,
16 California. Plaintiff spent approximately 30 minutes driving to these mandatory meetings,
17 and Plaintiff had no way of recording this time worked and thus was not paid for the drive
18 time. This off-the-clock work could have been recorded by Defendants, but they refused to do
19 so to avoid the payment of additional wages to Plaintiff and other non-party Aggrieved
20 Employees.

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

1 54. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
2 the balance of overtime compensation as required by California law, violates the provisions of
3 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
4 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
5 558 and/or 2699(a), (f), and (k).

6 **FAILURE TO PAY MINIMUM WAGES**

7 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

8 55. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
9 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
10 to be paid to employees, and the payment of a wage less than the minimum so fixed is
11 unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time
12 during which an employee is subject to the control of an employer, and includes all the time
13 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
14 Regs. tit. 8, § 11050(2)(M) (defining "Hours Worked").

15 56. As set forth above, as a result of Defendants' policy of limiting the amount of
16 overtime employees could accrue, Defendants required Plaintiff and other non-party
17 Aggrieved Employees to perform work off-the-clock before and after their scheduled shifts to
18 complete work-related tasks, such as assisting clients, preparing incident reports, waiting for
19 the following shift's employees to report to work, communicating with Defendants'
20 management, and driving to attend meetings. Defendants failed to track this time that Plaintiff
21 and other non-party Aggrieved Employees spent working off-the-clock, and Plaintiff and
22 other non-party Aggrieved Employees received no compensation for this time.

23 57. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
24 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
25 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
26 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
27 1194, 1197, and 1198.

28 58. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees

1 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
2 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
3 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

4 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
5 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

6 59. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
8 non-party Aggrieved Employees' employment by Defendants.

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

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

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

25 63. Under California law, an employer cannot evade meal period requirements via
26 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
27 *Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be
28 provided with the opportunity to eat his or her meal while performing the duties required and

1 any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long.
2 *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141
3 (2019).

4 64. First, as stated, Defendants had, and continue to have, company-wide policies
5 and/or practices of single staffing and/or understaffing while assigning heavy workloads, such
6 as caring for a large number of clients, which has resulted in a lack of meal period coverage
7 and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
8 uninterrupted meal periods to which they were entitled. Further, Defendants had a company-
9 wide practice and/or policy of failing to schedule meal periods, which further caused Plaintiff
10 and other non-party Aggrieved Employees to not be relieved of their duties for compliant
11 meal periods. As a result, Plaintiff and other non-party Aggrieved Employees had to work
12 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
13 extended periods of time before taking meal periods. For example, Plaintiff had to forgo and
14 work through all of her meal periods.

15 65. Second, and on information and belief, in conjunction with Defendants' policy
16 and/or practice of single-staffing, Defendants maintained and implemented a company-wide
17 on-premises meal period policy for employees, which mandated that Plaintiff and other non-
18 party Aggrieved Employees remain on the work premises during meal periods because
19 Defendants did not allow clients to be left unattended. Because Plaintiff and other non-party
20 Aggrieved Employees were restricted from leaving the premises during meal periods, they
21 were denied the ability to use their meal periods freely for their own purposes, such as running
22 personal errands. Thus, Defendants effectively maintained control over Plaintiff and other
23 non-party Aggrieved Employees during meal periods.

24 66. Third, Plaintiff and other non-party Aggrieved Employees worked shifts in
25 excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period.
26 For example, during her employment, Plaintiff sometimes worked shifts in excess of ten (10)
27 or more hours per day, but was not provided a second 30-minute meal period. Plaintiff and
28 other non-party Aggrieved Employees did not sign valid meal period waivers on days that

1 they were entitled to meal periods and were not relieved of all duties.

2 67. Fourth, Defendants maintained a company-wide unlawful written meal period
3 policy insofar as it permits employees who work six (6) hours in a day to waive their meal
4 periods. Defendants' "Employee Statement Re Decision to Forego Meal Period" states, in
5 relevant part, "Heluna Health is aware that there are some non-exempt employees working in
6 the Contra Costa County programs who have advised both their managers/supervisors and
7 Human Resources that they would prefer to work an eight (8) hour shift, with no meal period,
8 rather than an eight and one half hour (8½) shift, with a thirty (30) minute meal period. By
9 signing below, I am requesting to work such a schedule." Under California law, an employee
10 may only waive a meal period for shifts when the total work period is not more than six (6)
11 hours, and Defendants' on-duty meal period policy therefore is facially invalid.

12 68. Further, to the extent that Defendants' "Employee Statement Re Decision to
13 Forego Meal Period" form functioned as an "on-duty" meal period policy, it does not comply
14 with California law's requirements for on-duty meal periods. An on-duty meal period
15 permitted by IWC Wage Order No. 5-2001 does not absolve employers of the duty to provide
16 timely, 30-minute meal periods.¹ Defendants' on-duty meal policy failed to inform Plaintiff
17 and other non-party Aggrieved Employees that they are entitled to a 30- minute on-duty meal
18 period and that on-duty meal periods must be timely, and therefore is facially invalid.

19 69. Moreover, under California law, on-duty meal periods are a limited alternative
20 to the requirement to provide off-duty meal periods and can only be utilized under certain
21 circumstances. IWC Wage Order 5-2001, subdivision 11(A) provides that an on-duty meal
22 period "shall be permitted only when the nature of the work prevents an employee from being
23

24 ¹ Employers must provide employees a timely 30-minute meal period even though that
25 meal period may be on-duty instead of off-duty. *See L'Chaim*, 38 Cal. App. 5th at 149 ("If an
26 employee is entitled to an off-duty meal period of 30 minutes, yet work obligations intrude on
27 a portion of that time, the off-duty period is converted to an on-duty period—no matter how
28 small the portion of the period that work intruded upon—and the employee is paid for the
entire period. There is no suggestion that once work interrupts an employee's meal period, the
period simply ends even if 30 minutes have not yet passed.") and 147 ("[A]n on-duty meal
period is not the functional equivalent of no meal period at all. On-duty meal periods are an
intermediate category requiring more of employees than off-duty meal periods but less of
employees than their normal work.").

1 relieved of all duty and when by written agreement between the parties an on-the-job paid
2 meal period is agreed to.” Defendants’ “on-duty” meal period policy results from the
3 company’s own staffing and business decisions, not because the nature of the work required
4 on-duty meal periods. The work of Defendants’ employees is not of the kind that could be
5 said to meet the “nature of the work” exception. Plaintiff and other non-party Aggrieved
6 Employees provide communities support services, including monitoring clients, cleaning, and
7 preparing food. None of these tasks is akin to the kind that the California Division of Labor
8 Standards Enforcement (“DLSE”) has found warrant an on-duty meal period, such as
9 transporting hazardous materials via vehicles that must be monitored at all times pursuant to
10 federal regulation. Because of Defendants’ on-duty meal period policy, Plaintiff and other
11 non-party Aggrieved Employees did not receive all required off-duty meal periods and did not
12 receive premium pay for missed, late, or interrupted meal periods.

13 70. At all times herein mentioned, Defendants knew or should have known that, as
14 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
15 from being relieved of all duties and required to perform some of their assigned duties during
16 meal periods. Defendants further knew or should have known that Defendants did not pay
17 Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods
18 were missed, shortened, interrupted, and/or late. For example, Defendants’ “Employee
19 Statement Re Decision to Forego Meal Period” form requires employees to record their late,
20 shortened, and missed meal periods, but it fails to inform them at all that they are entitled to
21 meal period premiums for noncompliant meal periods.

22 71. Furthermore, Defendants engaged in a company-wide practice and/or policy of
23 not paying all meal period premiums owed when compliant meal periods are not provided.
24 Because of this practice and/or policy, Defendants and other non-party Aggrieved Employees
25 have not received premium pay for missed, late, and interrupted meal periods.

26 72. Defendants’ conduct violates the applicable IWC Wage Order, and California
27 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
28 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections

558 and/or 2699(a), (f), and (k).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

73. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

74. At all relevant times, 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.

75. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

76. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party 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, Defendants' company-wide practices and/or policies, including understaffing and/or single staffing while assigning heavy workloads, such as caring for a large number of clients, prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty to take rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and

1 other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

2 77. Furthermore, Defendants maintained and implemented a company-wide on-
3 premises rest period policy, which mandated Plaintiff and other non-party Aggrieved
4 Employees remain on the premises during their rest periods. Because Plaintiff and other non-
5 party Aggrieved Employees were restricted from leaving Defendants' premises during rest
6 periods, they were denied the ability to use their rest periods freely for their own purposes,
7 such as running personal errands. Thus, Defendants effectively maintained control over
8 Plaintiff and other non-party Aggrieved Employees during rest periods.

9 78. As a result of Defendants' practices and policies, Plaintiff and other non-party
10 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
11 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
12 were entitled. For example, Plaintiff missed her rest periods entirely due to the lack of
13 coverage and heavy workload.

14 79. Defendants have also engaged in a company-wide practice and/or policy of not
15 paying rest period premiums owed when rest periods are not authorized and permitted.
16 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
17 have not received premium pay for all missed rest periods.

18 80. Defendants' conduct violates the applicable IWC Wage Order and California
19 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
20 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
21 558 and/or 2699(a), (f), and (k).

22 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
23 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

1 82. During the relevant time period, Defendants have knowingly and intentionally
2 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
3 inaccurate wage statements. For example, Defendants issued uniform wage statements to
4 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
5 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
6 the pay period, including rates of pay for overtime wages, and the corresponding number of
7 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
8 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

25 85. California Labor Code section 1174(d) provides that “[e]very person employing
26 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments” Labor Code section 1174.5 provides that employers are subject to a
4 \$500 civil penalty if they fail to maintain accurate and complete records as required by section
5 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), Defendants
6 willfully failed to maintain accurate payroll records for Plaintiff and other non-party
7 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
8 result of failing to record the off-the-clock hours that they worked.

9 86. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
11 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
12 employment of any employees for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
14 Wage Order, employers are required to keep accurate time records showing when the
15 employee begins and ends each work period and meal period. During the relevant time
16 period, Defendants engaged in company-wide practices and/or policies of failing to record
17 actual hours worked, and thereby failed, on a company-wide basis, to keep accurate records of
18 work period and meal period start and end times for Plaintiff and other non-party Aggrieved
19 Employees, in violation of section 1198. Furthermore, in light of Defendants’ failure to
20 provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal
21 periods to which they were entitled, Defendants kept no records of meal start and end times
22 for second meal periods.

23 87. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
24 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
25 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

26 //

27 //

28 //

**FAILURE TO PAY ALL VESTED VACATION TIME AND PAID TIME OFF UPON
TERMINATION**

VIOLATION OF LABOR CODE SECTION 227.3

88. At all relevant times herein, California Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken his or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

89. Defendants had a company-wide policy and practice of failing to pay Plaintiff and other non-party Aggrieved Employees vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. Specifically, Defendants failed to properly calculate and pay all earned vested vacation time due to the hours Plaintiff and other non-party Aggrieved Employees worked off-the-clock pursuant to their company-wide policies and/or practices.

90. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

91. At all relevant times herein set forth, 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

1 the labor was performed. California Labor Code section 204 requires that all wages earned by
2 any person in any employment between the 16th and the last day, inclusive, of any calendar
3 month, other than those wages due upon termination of an employee, are due and payable
4 between the 1st and the 10th day of the following month.

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

11 93. During the relevant time period, Defendants willfully failed to pay Plaintiff and
12 other non-party Aggrieved Employees all wages due to them, including, but not limited to,
13 overtime wages, minimum wages, and/or meal and rest period premiums, within any time
14 period specified by California Labor Code section 204.

15 94. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
16 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

17 **FAILURE TO PAY WAGES UPON TERMINATION**

18 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

25 96. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
26 Employees who are no longer employed by Defendants all their earned wages, including, but
27 not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or
28 vested vacation wages, either at the time of discharge, or within seventy-two (72) hours of

1 their leaving Defendants' employ.

2 97. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
3 who are no longer employed by Defendants their wages earned and unpaid at the time of
4 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
5 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
6 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
7 2699(a), (f), and (k).

8 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

9 **VIOLATION OF LABOR CODE SECTION 2802**

10 98. At all times herein set forth, California Labor Code section 2802 provides that
11 an employer must reimburse employees for all necessary expenditures and losses incurred by
12 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
13 to prevent employers from passing off their cost of doing business and operating expenses on
14 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
15 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen
16 tools or equipment are required by the employer or are necessary to the performance of a job,
17 such tools and equipment shall be provided and maintained by the employer, except that an
18 employee whose wages are at least two (2) times the minimum wage provided herein may be
19 required to provide and maintain hand tools and equipment customarily required by the trade
20 or craft."

21 99. During the relevant time period, Defendants required Plaintiff and other non-
22 party Aggrieved Employees use their own personal mobile devices, including, but not limited
23 to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse
24 them for the costs of their work-related mobile device expenses. For example, Plaintiff and
25 other non-party Aggrieved Employees were required to use their personal mobile devices for
26 work-related tasks, including responding to calls from management and contacting other
27 employees, doctors, and case managers regarding client needs. Although Defendants required
28 Plaintiff and other non-party Aggrieved Employees to utilize their personal mobile devices

1 and/or mobile data to carry out their work-related responsibilities, Defendants failed to
2 reimburse them for these costs.

3 100. Defendants could have provided Plaintiff and other non-party Aggrieved
4 Employees with company mobile devices; or Defendants could have reimbursed employees
5 for the costs of their mobile device usage. Instead, Defendants passed these operating costs
6 onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did
7 not earn at least two (2) times the minimum wage.

8 101. Defendants' company-wide policy and/or practice of not reimbursing
9 employees for expenses necessarily incurred and passing on their operating costs to violates
10 California Labor Code section 2802. Plaintiff and other non-party Aggrieved Employees are
11 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
12 (k).

13 **REQUEST FOR JURY TRIAL**

14 Plaintiff requests a trial by jury.

15 **PRAYER FOR RELIEF**

16 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
17 judgment against Defendants, jointly and severally, as follows:

18 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
19 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different
20 amount.

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

22 2. That the Court declare, adjudge and decree that Defendants violated the
23 following California Labor Code provisions as to Plaintiff and other non-party Aggrieved
24 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
25 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
26 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
27 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
28 statements and maintain accurate payroll records); 227.3 (by failing to pay all vested vacation

time upon termination); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); and 2802 (by failing to reimburse business expenses);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

5. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

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

Dated: December 26, 2024

Respectfully submitted,

Capstone Law APC

By:



Roxanna Tabatabaeepour

Ryan Tish

Alexander Wallin

Attorneys for Plaintiff Kamure Kizart

EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

October 21, 2024

VIA ONLINE SUBMISSION

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

Subject: *Kamure Kizart v. Public Health Foundation Enterprises, Inc. dba Heluna Health*

Dear PAGA Administrator:

This office represents Kamure Kizart in connection with her claims under the California Labor Code. Ms. Kizart was an employee of PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. d/b/a HELUNA HEALTH ("PHFE").

The employer may be contacted directly at the address below:

PUBLIC HEALTH FOUNDATION ENTERPRISES, INC.
13300 CROSSROADS PARKWAY NORTH, SUITE 450
INDUSTRY, CA 91746

Ms. Kizart intends to seek civil penalties, attorneys' 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. Kizart seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PHFE in California as a non-exempt, hourly paid employee 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.

PHFE employed Ms. Kizart as a non-exempt Shelter Specialist from approximately July 2023 to April 2024. Ms. Kizart worked at PHFE's Brookside Shelter location in Richmond, California. During her employment, Ms. Kizart typically worked eight (8) hours or more per day and five (5) days per week from 8:00 a.m. to 4:00 p.m. Ms. Kizart's job duties included, without limitation, monitoring clients, cleaning, preparing food, and monitoring property.

PHFE has committed each of the following Labor Code violations against Ms. Kizart, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

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

PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. is a California corporation. PHFE is a non-profit organization and national leader in providing program and support services to improve the health and well-being of communities, with a large number of locations in California. Upon information and belief, PHFE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Industry, California, for all non-exempt, hourly paid employees working for PHFE in California, including Ms. Kizart and other aggrieved employees. At all relevant times, PHFE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Kizart and other aggrieved employees, regardless of their location or position.

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

PHFE willfully failed to pay all overtime wages owed to Ms. Kizart and other aggrieved employees. During the relevant time period, Ms. Kizart 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. Kizart’s experience and counsel’s review of those records currently available relating to Ms. Kizart’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. Kizart 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.

During the relevant time period, PHFE had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Kizart and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. PHFE implemented an overtime policy that states, in part “Heluna Health policy requires that any overtime . . . must be approved by an employee’s manager or supervisor before it is worked.” On information and belief, this policy of limiting overtime, coupled with PHFE’s practices of single-staffing and/or understaffing and assigning heavy workloads (*see infra*), led Ms. Kizart and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, a few times per month, Ms. Kizart worked off the clock prior to the start of her shifts assisting clients. As another example, approximately once per week, Ms. Kizart worked after clocking out from her shifts handling client issues, such as attending to client medical emergencies, filling out incident reports, and/or waiting for the following shift’s employees to report to work before she could leave. This work took 20 to 30 minutes on average, time for which Ms. Kizart was not paid. As a further example, PHFE management called Ms. Kizart outside of her scheduled shifts and/or on her days off to discuss work-related matters and ask questions about clients, which took approximately one (1) hour per month. Finally, on approximately two (2) occasions, PHFE’s management required that Ms. Kizart attend meetings in Pleasant Hill, California. Ms. Kizart spent approximately 30 minutes driving to these mandatory meetings, and Ms. Kizart had no way of recording this time worked and thus was not paid for the drive time. This off-the-clock work could have been recorded by PHFE, but it refused to do so to avoid the payment of additional wages to Ms. Kizart and other aggrieved employees.

PHFE knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Kizart and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Ms. Kizart 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. Kizart and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

PHFE’s failure to pay Ms. Kizart 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. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(L) (defining “Hours Worked”).

As set forth above, as a result of PHFE’s policy of limiting the amount of overtime employees could accrue, PHFE required Ms. Kizart and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts to complete work-related tasks, such as assisting clients,

preparing incident reports, waiting for the following shift's employees to report to work, communicating with PHFE's management, and driving to attend meetings. PHFE failed to track this time that Ms. Kizart and other aggrieved employees spent working off-the-clock, and Ms. Kizart and other aggrieved employees received no compensation for this time.

Thus, PHFE did not pay minimum wages for all hours worked by Ms. Kizart and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PHFE 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, PHFE regularly failed to pay at least minimum wages to Ms. Kizart 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. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

First, as stated, PHFE had, and continues to have, company-wide policies and/or practices of single-staffing and/or understaffing while assigning heavy workloads, such as caring for a large number of clients, which has resulted in a lack of meal period coverage and prevented Ms. Kizart and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, PHFE had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Ms. Kizart and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Ms. Kizart and other aggrieved employees had to work through

all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Ms. Kizart had to forgo and work through all of her meal periods.

Second, on information and belief, in conjunction with PFHE's policy and/or practice of single-staffing, PHFE maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Ms. Kizart and other aggrieved employees remain on the work premises during meal periods because PFHE did not allow clients to be left unattended. Because Ms. Kizart and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, PHFE effectively maintained control over Ms. Kizart and other aggrieved employees during meal periods.

Third, Ms. Kizart and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during her employment, Ms. Kizart sometimes worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Ms. Kizart and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Fourth, PHFE maintained a company-wide unlawful written meal period policy insofar as it permits employees who work six (6) hours in a day to waive their meal periods. PHFE's "Employee Statement Re Decision to Forego Meal Period" states, in relevant part, "Heluna Health is aware that there are some non-exempt employees working in the Contra Costa County programs who have advised both their managers/supervisors and Human Resources that they would prefer to work an eight (8) hour shift, with no meal period, rather than an eight and one half hour (8½) shift, with a thirty (30) minute meal period. By signing below, I am requesting to work such a schedule." Under California law, an employee may only waive a meal period for shifts when the total work period is not more than six (6) hours, and PHFE's on-duty meal period policy therefore is facially invalid.

Further, to the extent that PHFE's "Employee Statement Re Decision to Forego Meal Period" form functioned as an "on-duty" meal period policy, it does not comply with California law's requirements for on-duty meal periods. An on-duty meal period permitted by IWC Wage Order No. 5-2001 does not absolve employers of the duty to provide timely, 30-minute meal periods.² PHFE's on-duty meal policy failed to inform Ms. Kizart and other aggrieved employees that they are entitled to a 30-minute on-duty meal period and that on-duty meal periods must be timely, and therefore is facially invalid.

Moreover, under California law, on-duty meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. IWC Wage Order 5-2001, subdivision 11(A) provides that an on-duty meal period "shall be permitted only when

² Employers must provide employees a timely 30-minute meal period even though that meal period may be on-duty instead of off-duty. See *L'Chaim*, 38 Cal. App. 5th at 149 ("If an employee is entitled to an off-duty meal period of 30 minutes, yet work obligations intrude on a portion of that time, the off-duty period is converted to an on-duty period—no matter how small the portion of the period that work intruded upon—and the employee is paid for the entire period. There is no suggestion that once work interrupts an employee's meal period, the period simply ends even if 30 minutes have not yet passed.") and 147 ("[A]n on-duty meal period is not the functional equivalent of no meal period at all. On-duty meal periods are an intermediate category requiring more of employees than off-duty meal periods but less of employees than their normal work.").

the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.” PHFE’s “on-duty” meal period policy results from the company’s own staffing and business decisions, not because the nature of the work required on-duty meal periods. The work of PHFE’s employees is not of the kind that could be said to meet the “nature of the work” exception. Ms. Kizart and other aggrieved employees provide communities support services, including monitoring clients, cleaning, and preparing food. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement (“DLSE”) has found warrant an on-duty meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Because of PHFE’s on-duty meal period policy, Ms. Kizart and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

At all times herein mentioned, PHFE knew or should have known that, as a result of these policies, Ms. Kizart and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PHFE further knew or should have known that PHFE did not pay Ms. Kizart and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late. For example, PHFE’s “Employee Statement Re Decision to Forego Meal Period” form requires employees to record their late, shortened, and missed meal periods, but it fails to inform them at all that they are entitled to meal period premiums for noncompliant meal periods.

Furthermore, PHFE engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Kizart and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods.

Accordingly, PHFE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198 pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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, PHFE regularly failed to authorize and permit Ms. Kizart 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, PHFE’s company-wide practices, including single-staffing and/or understaffing and assigning heavy workloads, such as caring for a large number of clients, prevented Ms. Kizart and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, PHFE failed to schedule rest periods, which, coupled with PHFE’s failure to provide adequate rest period coverage, further led to Ms. Kizart and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of PHFE’s practices and policies, Ms. Kizart and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Ms. Kizart missed her rest periods entirely due to the lack of coverage and heavy workload.

PHFE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Kizart and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, PHFE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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. PHFE has not provided Ms. Kizart 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, PHFE has knowingly and intentionally provided Ms. Kizart and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PHFE issued uniform wage statements to Ms. Kizart 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, and the corresponding number of hours worked at each hourly rate. Specifically, PHFE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PHFE did not record the time Ms. Kizart and other aggrieved employees spent working off-the-clock, PHFE did not list the correct amount of gross wages and net wages earned by Ms. Kizart and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5). For the same reason, PHFE failed to accurately list the total number of the hours worked by Ms. Kizart 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).

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), PHFE willfully failed to maintain accurate payroll records for Ms. Kizart 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, PHFE 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 start and end times for Ms. Kizart and other aggrieved employees in violation of section 1198. Furthermore, in light of PHFE’s failure to provide Ms. Kizart and other aggrieved employees with second 30-minute meal periods to which they were entitled, PHFE kept no records of meal start and end times for second meal periods.

Because PHFE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Kizart 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. Kizart 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. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, PHFE had a company-wide policy and practice of failing to pay Ms. Kizart and other aggrieved employees all vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. Specifically, PHFE failed to properly calculate and pay all earned vested vacation time due to the hours Ms. Kizart and other aggrieved employees worked off-the-clock pursuant to its company-wide policies and/or practices.

PHFE's failure to pay other Ms. Kizart and aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with Labor Code section 227.3, pursuant to Labor Code sections 2699(a), (f), and (k).

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

Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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.

PHFE willfully failed to pay Ms. Kizart and other aggrieved employees who are no longer employed by PHFE all their earned wages, including, but not limited to, overtime wages, minimum wages, vested vacation wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving PHFE's employ.

Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, PHFE, on a company-wide basis, required that Ms. Kizart and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Kizart and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls from management and contacting other employees, doctors, and case managers regarding client needs. Although PHFE required Ms. Kizart and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, PHFE failed to reimburse them for these costs.

PHFE could have provided Ms. Kizart and other aggrieved employees with company mobile devices; or PHFE could have reimbursed employees for the costs of their mobile device usage. Instead, PHFE passed these operating costs onto Ms. Kizart and other aggrieved employees. At all relevant times, Ms. Kizart did not earn at least two (2) times the minimum wage.

Thus, PHFE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Kizart and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PHFE into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

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

Accordingly, Ms. Kizart 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 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Kizart, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against PHFE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

This notice shall further serve as Ms. Kizart's reasonable attempt to settle his dispute with PHFE prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform PHFE of Ms. Kizart's aforementioned grievances and the proposed remedies as detailed below, while affording PHFE a reasonable opportunity to satisfy Ms. Kizart's demands.

Demand is hereby made that PHFE shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. PHFE shall pay Ms. Kizart and all other aggrieved employees employed by PHFE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. PHFE shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. PHFE shall conduct a survey or interview all current and former aggrieved employees in California who worked for PHFE in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. PHFE shall reimburse Ms. Kizart and all aggrieved employees who were required to pay for any business expenses incurred for PHFE's benefit, including, but not limited to, mobile device usage, as required by Labor Code section 2802.
5. PHFE shall pay accrued legal interest to Ms. Kizart and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
6. PHFE shall provide Ms. Kizart and all aggrieved employees employed by PHFE at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
7. PHFE shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
8. PHFE shall pay former aggrieved employees their vested vacation wages at their final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served, as required by Labor Code section 227.3.

PHFE shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

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

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

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel", is shown within a light gray rectangular box.

Ninel Kocharyan

Copy: PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. (via U.S. Certified Mail)

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

CERTIFIED MAIL®



7021 1970 0001 9028 3367

**PUBLIC HEALTH
FOUNDATION
ENTERPRISES, INC.**
13300 CROSSROADS PARKWAY
NORTH, SUITE #450
INDUSTRY, CA 91746

PLACE STICKER IN TOP OF ENVELOPE TO BE OPENED AFTER MAIL IS OPENED TO PREVENT DAMAGE TO CONTENTS

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☐ Complete items 1, 2, and 3. ☐ Print your name and address on the reverse		A. Signature X	☐ Agent ☐ Addressee
PUBLIC HEALTH FOUNDATION ENTERPRISES, INC. 13300 CROSSROADS PARKWAY NORTH, SUITE #450 INDUSTRY, CA 91746		B. Received by (Printed Name)	C. Date of Delivery
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
 9590 9402 7420 2055 5431 64		3. Service Type ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Adult Signature Restricted Delivery ☐ Registered Mail Restricted Delivery ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation ☐ Collect on Delivery Restricted Delivery ☐ Collect on Delivery Restricted Delivery ☐ Restricted Delivery	
2. Article Number (Transfer from service label) 7021 1570 0001 9028 3367			
PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt			

SENDER: COMPLETE THIS SECTION

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

**PUBLIC HEALTH
FOUNDATION
ENTERPRISES, INC.**
13300 CROSSROADS PARKWAY
NORTH, SUITE #450
INDUSTRY, CA 91746



9590 9402 7420 2055 5431 64

2. Article Number (Transfer from service label)

7021 1970 0001 9028 3367

COMPLETE THIS SECTION ON DELIVERY

A. Signature

(Handwritten signature)

☐ Agent

☐ Addressee

B. Received by (Printed Name)

J. ARIST

C. Date of Delivery

10/24/24

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Restricted Delivery