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[Additional Counsel on Following Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

WENDY SGONTZ, VICKY WRIGHT, and  
NICOLE GREGORY, JENNIFER  
SHELLENBAUM, as individuals and on  
behalf of all others similarly aggrieved,

Plaintiffs,

v.

CROSSMARK, INC., a Delaware corporation;  
and DOES 1-50, inclusive,

Defendants.

CASE NO. 30-2021-01204377-CU-OE-  
CXC

**PLAINTIFFS' FIRST AMENDED  
PRIVATE ATTORNEYS GENERAL  
ACT ("PAGA") REPRESENTATIVE  
COMPLAINT**

**JURY TRIAL DEMANDED**

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1 Plaintiffs WENDY SGONTZ (“Plaintiff SGONTZ”), Plaintiff VICKY WRIGHT  
2 (“Plaintiff WRIGHT”), Plaintiff NICOLE GREGORY (“Plaintiff GREGORY”), and JENNIFER  
3 SHELLENBAUM (“Plaintiff SHELLENBAUM”) (collectively referred to herein as “ Plaintiffs”),  
4 as individuals, on behalf of themselves and all other similarly aggrieved employees (“Aggrieved  
5 Employees”), hereby file this First Amended Complaint against Defendants CROSSMARK, INC.  
6 and DOES 1-50, inclusive (hereinafter “Defendants”), and based on information and belief allege  
7 as follows:

8 **THE PARTIES**

9 1. Plaintiff SGONTZ is, and at relevant times was, an individual domiciled in the State  
10 of California and a citizen of the State of California who worked as a non-exempt employee for  
11 Defendants in the State of California, from approximately September 2018 to approximately April  
12 2020.

13 2. Plaintiff WRIGHT is, and at relevant times was, an individual domiciled in the State  
14 of California and a citizen of the State of California. Plaintiff WRIGHT is a former employee of  
15 Defendants. Plaintiff WRIGHT worked for Defendants as a non-exempt employee with a job title(s)  
16 of merchandiser and/or similar title(s) and/or position(s) during the relevant period. Plaintiff  
17 WRIGHT worked for Crossmark on various diverse dates from in or around 2020 through in or  
18 around April 2023, and was assigned by Crossmark to work at various Target, CVS, Rite Aid,  
19 Albertsons, and/or Ralphs locations in California, including but not limited to, locations in San  
20 Pedro, California, for at least approximately seven (7) months from in or around 2022 through in  
21 or around April 2023. Plaintiff WRIGHT regularly worked at least five (5) to eight (8) hours per  
22 day. Defendants paid Plaintiff WRIGHT an hourly rate for time counted by Defendants as hours  
23 worked.

24 3. Plaintiff GREGORY is, and at relevant times was, an individual domiciled in the  
25 State of California and a citizen of the State of California who worked as a non-exempt employee  
26 for Defendants in the State of California. Plaintiff GREGORY is a former employee of Defendants.  
27 Plaintiff GREGORY worked for Defendants from in or around January 2023 through in or around  
28 on or around May 15, 2023. Crossmark assigned Plaintiff GREGORY to work at various locations,

1 including but not limited to, Walmart stores/locations in including but not limited to, Visalia and  
2 Dinuba, California. Plaintiff GREGORY regularly worked at least five and one-half (5 1/2) hours  
3 per day. Defendants paid Plaintiff GREGORY an hourly rate for time counted by Defendants as  
4 hours worked.

5 4. Plaintiff SHELLENBAUM is, and at relevant times was, an individual domiciled in  
6 the State of California and a citizen of the State of California. who worked as a non-exempt  
7 employee for Defendants in the State of California, from approximately September 2018 to  
8 approximately April 2020. Plaintiff SHELLENBAUM is a former employee of Defendants.  
9 Plaintiff SHELLENBAUM worked for Defendants as a non-exempt employee from in or around  
10 February 2017 through in or around February 2021. Plaintiff SHELLENBAUM regularly worked  
11 at least five and one-half hours per day, and at times worked more than eight (8) hours in a workday  
12 and/or more than forty hours in a workweek. Defendants paid Plaintiff SHELLENBAUM and  
13 hourly rate for time counted by Defendants as hours worked, and Plaintiff SHELLENBAUM was  
14 also compensated with non-discretionary incentive wages and/or other non-discretionary  
15 compensation.

16 5. Defendants CROSSMARK, INC. is a Delaware corporation that, at all relevant  
17 times,  
18 was authorized to do business within the State of California and is doing business in the State of  
19 California.

20 6. The true names and capacities of the DOE Defendants sued herein as DOES 1  
21 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants  
22 by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible  
23 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to  
24 reflect the true names and capacities of the Doe Defendants when such identities become known.

25 7. Plaintiffs are further informed and believe that, at all relevant times, each  
26 Defendants  
27 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling  
28 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in

1 interest of some or all of the other Defendants, and was engaged with some or all of the other  
2 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the  
3 other Defendants so as to be liable for their conduct with respect to the matters alleged in this  
4 complaint. Plaintiffs are further informed and believe and thereon allege that each Defendants acted  
5 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,  
6 each Defendants knew or should have known about, authorized, ratified, adopted, approved,  
7 controlled, aided and abetted the conduct of all other Defendants.

8 8. At all relevant times, Defendants was and is legally responsible for all of the  
9 unlawful conduct, policies, practices, acts and omissions complained of herein. Further, Defendants  
10 are responsible for each of the unlawful acts or omissions complained of herein under the doctrine  
11 of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant  
12 times undertaken as employees of Defendants, acting within the scope of their employment or  
13 authority in all of the unlawful activities described herein.

14 9. Whenever and wherever reference is made in this complaint to any act or failure to  
15 act by a Defendants or co-Defendants, such allegations and references shall also be deemed to mean  
16 the acts and/or failures to act by each Defendants acting individually, jointly and severally.

#### 17 **JURISDICTION AND VENUE**

18 10. This Court has jurisdiction over Plaintiffs' claims for penalties pursuant to  
19 California statutes, including but not limited to the PAGA, and decisional law and regulations.

20 11. Venue is proper in the County of Orange pursuant to sections 395 and 395.5 of the  
21 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within  
22 this judicial district and conduct alleged by Plaintiffs herein occurred in this this judicial district.  
23 See also *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069 (venue  
24 in a PAGA action is proper in any county where the defendants committed Labor Code violations  
25 against some of its employees). Venue is also proper pursuant to section 393 of the California Code  
26 of Civil Procedure because the cause, or some part of the cause, arose in the County of Orange.

#### 27 **FACTUAL ALLEGATIONS**

28 12. During the one-year and sixty-five day period preceding filing of this Complaint,

1 Plaintiffs were employed by Defendants as a non-exempt employee in the State of California.  
2 Defendants, at all relevant times, exercised control over Plaintiffs and the other aggrieved  
3 employees (as defined below) and suffered and/or permitted them to work.

4 13. Plaintiff SGONTZ worked for Defendants as a non-exempt event/engagement  
5 specialist from approximately September 2018 to approximately April 2020. Plaintiff SGONTZ  
6 was hired by Defendants who placed Plaintiff SGONTZ at Sam's Club Fountain Valley location  
7 from September of 2018 until Plaintiff SGONTZ was terminated by Defendants in April 2020.  
8 Plaintiff SGONTZ provided samples to store customers, cleaned & dried dishes in the kitchen,  
9 sanitized carts, put up price signs, and gathered all items needed to serve samples. Plaintiff  
10 SGONTZ was paid an hourly rate for hours counted by Defendants as time worked.

11 14. Plaintiff WRIGHT is a former employee of Defendants. Plaintiff WRIGHT worked  
12 for Defendants as a non-exempt employee with a job title(s) of merchandiser and/or similar title(s)  
13 and/or position(s) during the relevant period. Plaintiff WRIGHT worked for Crossmark on various  
14 diverse dates from in or around 2020 through in or around April 2023, and was assigned by  
15 Crossmark to work at various Target, CVS, Rite Aid, Albertsons, and/or Ralphs locations in  
16 California, including but not limited to, locations in San Pedro, California, for at least  
17 approximately seven (7) months from in or around 2022 through in or around April 2023. Plaintiff  
18 WRIGHT regularly worked at least five (5) to eight (8) hours per day. Defendants paid Plaintiff  
19 WRIGHT an hourly rate for time counted by Defendants as hours worked.

20 15. Plaintiff GREGORY is, and at relevant times was, an individual domiciled in the  
21 State of California and a citizen of the State of California who worked as a non-exempt employee  
22 for Defendants in the State of California. Plaintiff GREGORY is a former employee of Defendants.  
23 Plaintiff GREGORY worked for Defendants from in or around January 2023 through in or around  
24 on or around May 15, 2023. Crossmark assigned Plaintiff GREGORY to work at various locations,  
25 including but not limited to, Walmart stores/locations in including but not limited to, Visalia and  
26 Dinuba, California. Plaintiff GREGORY regularly worked at least five and one-half (5 1/2) hours  
27 per day. Defendants paid Plaintiff GREGORY an hourly rate for time counted by Defendants as  
28 hours worked.

1           16. Plaintiff SHELLENBAUM is, and at relevant times was, an individual domiciled in  
2 the State of California and a citizen of the State of California. who worked as a non-exempt  
3 employee for Defendants in the State of California, from approximately September 2018 to  
4 approximately April 2020. Plaintiff SHELLENBAUM is a former employee of Defendants.  
5 Plaintiff SHELLENBAUM worked for Defendants as a non-exempt employee from in or around  
6 February 2017 through in or around February 2021. Plaintiff SHELLENBAUM regularly worked  
7 at least five and one-half hours per day, and at times worked more than eight (8) hours in a workday  
8 and/or more than forty hours in a workweek. Defendants paid Plaintiff SHELLENBAUM and  
9 hourly rate for time counted by Defendants as hours worked, and Plaintiff SHELLENBAUM was  
10 also compensated with non-discretionary incentive wages and/or other non-discretionary  
11 compensation.

12           17. **Unpaid Minimum and Overtime Wages.** Defendants failed to compensate  
13 Plaintiffs and Aggrieved Employees for all hours worked, resulting in the underpayment of  
14 minimum and overtime wages. Defendants failed to compensate Plaintiffs and Aggrieved  
15 Employees for all hours worked by virtue of, Defendants' automatic deduction and time rounding  
16 policies, and failure to relieve employees of all duties/employer control during unpaid meal periods  
17 or otherwise unlawful practices for missed or improper meal periods, as explained below.

18           18. Based on information and belief, Defendants implemented a policy and/or practice  
19 of rounding meal period start and end times and/or automatically deducting at least thirty minutes  
20 per shift for meal periods, despite having actual and/or constructive knowledge that Plaintiffs and  
21 other Aggrieved Employees were subject to Defendants' control during purported meal periods  
22 and/or were otherwise not afforded lawful meal periods, depriving Plaintiffs and Aggrieved  
23 Employees of all wages owed.

24           19. Based on information and belief, Aggrieved Employees were not paid for all hours  
25 worked due to Defendants' policy and/or practice of paying according to scheduled hours worked  
26 instead of actual time worked, time rounding policies and practices, and/or mandated off-the clock  
27 work policies and/or practices.

28           20. For example, based on information and belief, Aggrieved Employees were

1 pressured to complete at least some work tasks off-the-clock in order to meet Defendants' goals  
2 and expectations.

3 21. For example, based on information and belief, required Plaintiff GREGORY and  
4 other Aggrieved Employees to spend time reviewing documents, policies and/or training materials  
5 without compensating Plaintiff GREGORY and other Aggrieved Employees for this off-the-clock  
6 work, resulting in Defendants' failure to compensate Plaintiff and other Aggrieved Employees for  
7 all work time and the underpayment of wages owed to Plaintiff GREGORY and other Aggrieved  
8 Employees.

9 22. For example, Plaintiff GREGORY was required to perform at least approximately  
10 eight (8) hours of off-the-clock work in the form of including but not limited to, watching videos,  
11 reading training manuals and/or other materials, and/or taking tests usually if not always remotely  
12 from her home outside of scheduled shift times as required by Defendants. However, Defendants  
13 did not compensate Plaintiff GREGORY at all and/or in full for this off-the-clock work, resulting  
14 in the underpayment of wages owed to Plaintiff GREGORY.

15 23. Based on information and belief, Aggrieved Employees were required to complete  
16 off-the-clock work outside of scheduled shifts due to including but not limited to, work-related  
17 phone calls and/or messages they received to their phones and/or personal devices and were  
18 required to respond to, including but not limited to, communications from supervisors regarding  
19 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved  
20 Employees.

21 24. For example, at times, Plaintiff WRIGHT was required to review and respond to  
22 work-related emails and/or text messages from her supervisor but was not compensated by  
23 Defendants for this off-the-clock work resulting in the underpayment of wages owed to Plaintiff  
24 WRIGHT.

25 25. Based on information and belief, Defendants required Aggrieved Employees to  
26 spend time reviewing documents, policies and/or training materials without compensating  
27 Aggrieved Employees for this off-the-clock work, resulting in Defendants' failure to compensate  
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1 Aggrieved Employees for all work time and the underpayment of wages owed to Aggrieved  
2 Employees.

3 26. Based on information and belief, Defendants did not compensate Aggrieved  
4 Employees for all time spent donning and doffing personal protective equipment, safety equipment  
5 and/or uniforms/work clothing (e.g., gloves and/or face masks) during meal periods, before the start  
6 of a scheduled shift, and after completing a scheduled shift, resulting in Defendants' failure to pay  
7 Aggrieved Employees for all work time and the underpayment of minimum wages and overtime  
8 wages owed to Aggrieved Employees.

9 27. Based on information and belief, at times, Defendants' electronic employee time-  
10 keeping system/app malfunctioned such that Aggrieved Employees were required to either  
11 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were  
12 unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting  
13 in off-the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on  
14 information and belief, Aggrieved Employees experienced the same issues when clocking out for  
15 shifts and/or back in for meal periods. This time spent under Defendants' control was not recorded  
16 and not compensated and resulted in unpaid minimum wages owed to Aggrieved Employees.

17 28. Based on information and belief, Aggrieved Employees were required to undergo  
18 security screenings and/or other mandated screenings before and/or after a scheduled shift and/or  
19 before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

20 29. Based on information and belief, Defendants required Aggrieved Employees to  
21 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their  
22 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock  
23 work.

24 30. Moreover, based on information and belief, Aggrieved Employees who opened their  
25 work locations were required to first unlock the doors, turn on all the lights in the store/facility  
26 and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work  
27 and the underpayment of wages owed to Aggrieved Employees. Based on further information and  
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1 belief, Aggrieved Employees in charge of closing their location(s) were required to first clock out  
2 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the  
3 doors. This resulted in additional off-the-clock post-shift work that was not compensated and the  
4 underpayment of wages owed to Aggrieved Employees.

5 31. Based on information and belief, at times, Defendants require/required Aggrieved  
6 Employees to travel between Defendants' stores, facilities and/or locations without compensating  
7 Aggrieved Employees at all and/or in full for the travel time. For example, based on information  
8 and belief, due to scheduling issues and/or understaffing, Aggrieved Employees were at times  
9 required after working at their scheduled facility location to cover a shift at another of Defendants'  
10 stores/facilities/locations but were not compensated at all and/or in full for the time spent driving  
11 to the second store/facility, resulting in the underpayment of minimum and overtime wages owed  
12 to Aggrieved Employees.

13 32. Moreover, based on information and belief, Defendants failed to pay Aggrieved  
14 Employees split shift premium wages when they worked split shifts during the relevant period. For  
15 example, based on information and belief, at times, Defendants required Aggrieved Employees to  
16 work two separate shifts in the same day. Based on information and belief, Defendants failed to  
17 pay Aggrieved Employees split shift compensation whenever Plaintiffs' and/or other Aggrieved  
18 Employees' work schedules were interrupted by non-paid non-working periods established by  
19 Defendants, which resulted in a violation of the applicable Wage Order (See section 4 of all  
20 applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum  
21 wage shall be paid in addition to the minimum wage for that workday..."). See, also, Cal. Code  
22 Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum  
23 wage shall be paid in addition to the minimum wage for that workday, except when the employee  
24 resides at the place of employment). Defendants also failed to separately itemize these split shift  
25 premium wages on Plaintiffs' and/or other Aggrieved Employees' wage statements, in violation of  
26 Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See,  
27 [https://www.dir.ca.gov/dlse/split\\_shift.htm](https://www.dir.ca.gov/dlse/split_shift.htm). (The employer must itemize the premium payment on  
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1 the pay stub provided to the employee, and it should be shown as a separate category such as “Split  
2 Shift Premium” and should not be lumped into another category such as wages, bonus, etc.  
3 Defendants failed to separately account for the split shift premiums earned by Plaintiffs and/or other  
4 Aggrieved Employees on their wage statements. Based on information and belief, Defendants  
5 failed to pay Aggrieved Employees for time they were required to spend completing orientation,  
6 policy questionnaires, and/or time spent completing the onboarding process including but not  
7 limited to reviewing various documents and policies provided by Defendants. Based on information  
8 and belief, this work time was completed off-the-clock and was not compensated.

9 33. Based on information and belief, Defendants implemented a time-rounding system  
10 that as applied systematically deprived Plaintiffs and other Aggrieved Employees of compensable  
11 time because the time-rounding system implemented by Defendants would almost always, if not  
12 always, result in understating actual compensable work time.

13 34. Defendants’ failure to pay for all time worked by virtue of its time rounding, auto-  
14 deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods,  
15 and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum  
16 wages owed to Aggrieved Employees as well as unpaid overtime wages for those Aggrieved  
17 Employees who worked more than eight (8) hours in a day and/or more than forty (40) hours in a  
18 week.

19 35. Based on information and belief, Defendants had actual and/or constructive  
20 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure  
21 to provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the  
22 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation  
23 of California's minimum and overtime wage laws.

24 36. Based on information and belief, Defendants failed and continue to fail to pay  
25 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours  
26 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work  
27 in a work week, in violation of California's overtime laws.  
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1           37. Based on information and belief, Defendants failed to incorporate all non-  
2 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive  
3 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used  
4 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of  
5 overtime wages owed to Aggrieved Employees.

6           38. Additionally, Defendants also violated California's overtime laws as to those  
7 Aggrieved Employees that were subject to an Alternative Workweek Schedule (AWS).

8           39. Based on information and belief, Defendants adopted an Alternative Workweek  
9 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly  
10 elected and/or implemented in accordance with the requirements of California law and/or  
11 Defendants failed to comply with the AWS, and as such, Defendants violated California's overtime  
12 laws, including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and  
13 Labor Code section 1198. Based on information and belief, Defendants failed to properly adopt an  
14 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

15           (C) Election Procedures Election procedures for the adoption and repeal of  
16 alternative workweek schedules require the following:

17           (1) Each proposal for an alternative workweek schedule shall be in the form of a  
18 written agreement proposed by the employer. The proposed agreement must designate a regularly  
19 scheduled alternative workweek in which the specified number of workdays and work hours are  
20 regularly recurring. The actual days worked within that alternative workweek schedule need not be  
21 specified. The employer may propose a single work schedule that would become the standard  
22 schedule for workers in the work unit, or a menu of work schedule options, from which each  
23 employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule  
24 options, the employee may, with the approval of the employer, move from one menu option to  
25 another.

26           (2) In order to be valid, the proposed alternative workweek schedule must be  
27 adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3)  
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1 vote of the affected employees in the work unit. The election shall be held during regular working  
2 hours at the employees' work site. For purposes of this subsection, "affected employees in the work  
3 unit" may include all employees in a readily identifiable work unit, such as a division, a department,  
4 a job classification, a shift, a separate physical location, or a recognized subdivision of any such  
5 work unit. A work unit may consist of an individual employee as long as the criteria for an  
6 identifiable work unit in this subsection is met.

7 (3) Prior to the secret ballot vote, any employer who proposed to institute an  
8 alternative workweek schedule shall have made a disclosure in writing to the affected employees,  
9 including the effects of the proposed arrangement on the employees' wages, hours, and benefits.  
10 Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for  
11 the specific purpose of discussing the effects of the alternative workweek schedule. An employer  
12 shall provide that disclosure in a non- English language, as well as in English, if at least five (5)  
13 percent of the affected employees primarily speak that non-English language. The employer shall  
14 mail the written disclosure to employees who do not attend the meeting. Failure to comply with  
15 this paragraph shall make the election null and void.

16 (4) Any election to establish or repeal an alternative workweek schedule shall be  
17 held at the work site of the affected employees. The employer shall bear the costs of conducting  
18 any election held pursuant to this section. Upon a complaint by an affected employee, and after an  
19 investigation by the Labor Commissioner, the Labor Commissioner may require the employer to  
20 select a neutral third party to conduct the election.

21 (5) Any type of alternative workweek schedule that is authorized by the Labor Code  
22 may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected  
23 employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected  
24 employees shall be required to reverse the alternative workweek schedule. The election to repeal  
25 the alternative workweek schedule shall be held not more than 30 days after the petition is submitted  
26 to the employer, except that the election shall be held not less than 12 months after the date that the  
27 same group of employees voted in an election held to adopt or repeal an alternative workweek  
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1 schedule. The election shall take place during regular working hours at the employees' work site.  
2 If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon  
3 proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an  
4 extension of time for compliance.

5 (6) Only secret ballots may be cast by affected employees in the work unit at any  
6 election held pursuant to this section. The results of any election conducted pursuant to this section  
7 shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days  
8 after the results are final, and the report of election results shall be a public document. The report  
9 shall include the final tally of the vote, the size of the unit, and the nature of the business of the  
10 employer.

11 (7) Employees affected by a change in the work hours resulting from the adoption  
12 of an alternative workweek schedule may not be required to work those new work hours for at least  
13 30 days after the announcement of the final results of the election.

14 (8) Employers shall not intimidate or coerce employees to vote either in support of  
15 or in opposition to a proposed alternative workweek.

16 40. No employees shall be discharged or discriminated against for expressing opinions  
17 concerning the alternative workweek election or for opposing or supporting its adoption or repeal.  
18 However, nothing in this section shall prohibit an employer from expressing his/her position  
19 concerning that alternative workweek to the affected employees. A violation of this paragraph shall  
20 be subject to Labor Code § 98 *et seq.*

21 41. On information and belief, Plaintiffs allege that Defendants failed to comply with  
22 the above procedures, and thus, failed to properly institute an alternative workweek for the purpose  
23 of obtaining a lawful exemption from overtime premiums for its mandated 10-hour/4-day schedule.  
24 Based on information and belief, Defendants also failed to report the results to the Office of Policy,  
25 Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus,  
26 violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in  
27 violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage Orders. These  
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1 violations subject employer to civil penalties under Labor Code §§ 558 and 2699, et seq., and all  
2 applicable Wage Orders. Each violation of each Labor Code section and Wage Order provision  
3 results in a separate civil penalty, for each Aggrieved Employee, for each pay period during which  
4 the referenced statutes and Wage Order provisions were violated.

5         42. Moreover, to the extent there was an AWS that was properly adopted, Defendants  
6 violated California's overtime laws as to Aggrieved Employees that were subject to an Alternative  
7 Workweek Schedule (AWS) but were required to work shifts shorter than the agreed upon AWS.  
8 Under the relevant Wage Order, "If an employer... requires an [AWS] employee to work fewer  
9 hours than those that are regularly scheduled by the agreement, the employer shall pay the employee  
10 overtime compensation at a rate of one and one-half (1 ½ ) times the employee's regular rate of pay  
11 for all hours worked in excess of eight (8) hours... for the day the employee is required to work the  
12 reduced hours." See Section 3 of all applicable Wage Orders.

13         43. Based on information and belief, at times during Aggrieved Employees'  
14 employment by Defendants', Aggrieved Employees worked subject to an alternative work week  
15 schedule. Based on information and belief, at times, Aggrieved Employees that were subject to an  
16 AWS, were sent home early and/or worked less hours than those that were scheduled under the  
17 AWS. On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times  
18 the regular rate of pay after the first eight hours of work. Instead, Defendants paid Aggrieved  
19 Employees their base rate(s) pay for all hours worked on the shortened shift(s) in violation of the  
20 alternative workweek schedule, and in violation of California Labor Code section 510, the  
21 applicable Wage Order, and Labor Code section 1198. As such, Aggrieved Employees that were  
22 subject to an AWS were also deprived of all owed overtime wages when required to work shortened  
23 shifts.

24         44. **Meal Period Violations.** Plaintiffs and other Aggrieved Employees consistently  
25 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.  
26 However, Plaintiffs and other Aggrieved Employees would not receive legally compliant thirty (30)  
27 minute first and second meal periods. Based on information and belief, Aggrieved Employees were  
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consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

45. For example, based on information and belief, Aggrieved Employees were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, Aggrieved Employees were at times interrupted during purported meal periods and/or had meal periods cut short and/or restricted to Defendants' premises due to the need to continue assigned job duties.

46. Based on information and belief, other Aggrieved Employees were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet Defendants' goals and expectations.

47. Based on information and belief, Defendants implemented policies and/or practices that failed to relieve Aggrieved Employees of all duties and Defendants' control during unpaid meal periods.

48. Based on information and belief, Defendants required Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which Defendants failed to take into account when scheduling meal periods for Aggrieved Employees. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

49. Based on information and belief, despite Defendants' failure to provide lawful meal periods, Defendants implemented a policy and/or practice of rounding the start and end times of Plaintiffs' and other Aggrieved Employees' meal periods and/or automatically deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal periods despite having actual and/or constructive knowledge that Plaintiffs and other Aggrieved Employees did not receive lawful meal periods.

1           50.     Moreover, based on information and belief, Aggrieved Employees who worked  
2 shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal  
3 period.

4           51.     Based on information and belief, Defendants failed to instruct Plaintiffs and other  
5 Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further  
6 information and belief, Defendants did not have a compliant written meal period policy, nor did  
7 Defendants have any sort of compliant policy in practice.

8           52.     Moreover, based on information and belief, Defendants failed to keep accurate  
9 records of the true start and end times of Plaintiffs' and Aggrieved Employees' meal periods. Based  
10 on information and belief, to the extent meal periods were recorded, Defendants illegally rounded  
11 the start and end times of purported meal periods resulting in Plaintiffs and other Aggrieved  
12 Employees not being paid for all time worked as well as late and/or shortened meal periods. *See*  
13 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

14           53.     Based on information and belief, Defendants had actual and/or constructive  
15 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods  
16 that were free of Defendants' control owed to Plaintiffs and other Aggrieved Employees, in  
17 violation of California's meal period laws.

18           54.     Defendants failed to pay Plaintiffs and other Aggrieved Employees, an additional  
19 hour of wages at their respective regular rates of compensation for each workday a lawful meal  
20 period was not provided. Defendants either failed to pay a meal period premium at all for each  
21 workday a lawful meal period was not provided and/or failed to pay the proper meal period  
22 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,  
23 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or  
24 compensation for purposes of calculating the owed meal period premium.

25           55.     Rest Period Violations. Defendants did not properly authorize and provide Plaintiffs  
26 and other Aggrieved Employees with legally compliant rest periods at a rate of every four (4) hours  
27 worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work  
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1 period, as required by law.

2 56. Plaintiffs and other Aggrieved Employees were not adequately informed,  
3 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California  
4 law. Based on information and belief, Defendants had no policy in place nor instruction as to the  
5 taking or timing of duty-free rest periods.

6 57. Based on information and belief, Defendants did not have a have a compliant written  
7 rest period policy, nor did Defendants have any sort of compliant rest period policy in practice.

8 58. For example, based on information and belief, Aggrieved Employees were at times  
9 unable to take compliant rest periods due to their need to complete assigned job duties and/or were  
10 unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods  
11 restricted to Defendants' premises.

12 59. Also, Defendants failed to authorize and/or provide any version of a third rest period  
13 to Aggrieved Employees during shifts lasting longer than ten (10) hours.

14 60. Based on information and belief, any purported rest periods were interrupted, cut  
15 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of  
16 their job duties, and/or commentary from supervisors pressuring them to skip rest periods  
17 completely and/or take non-compliant rest periods.

18 61. Moreover, based on information and belief, Defendants failed to provide any form  
19 of a third rest period on shifts lasting longer than ten hours.

20 62. Based on information and belief, Defendants implemented policies and/or practices  
21 that failed to relieve Plaintiffs and other Aggrieved Employees of all duties and Defendants' control  
22 during rest periods.

23 63. Based on information and belief, Aggrieved Employees were pressured to complete  
24 their work duties according to a designated schedule such that rest periods were only taken once  
25 tasks were completed, and/or as time permitted.

26 64. Furthermore, Defendants failed to pay a rest period premium for each day in which  
27 Plaintiffs and other Aggrieved Employees experienced a missed/unlawful rest period in violation  
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1 of California law. Defendants either failed to pay a rest period premium at all for each workday a  
2 proper rest period was not provided and/or failed to pay the proper rest period premium for failure  
3 to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift  
4 differential pay, and/or other non-discretionary compensation into the regular rate of compensation  
5 for purposes of calculating the owed rest period premium.

6         **65. Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable  
7 IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of  
8 the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from  
9 the toilet rooms and shall be available to employees during work hours.”

10         66. Defendants’ locations/facilities are generally similar in layout and design, and there  
11 was, and continues to be, space that allows for a resting facility that employees may use to cease  
12 work and recover during meal or rest periods. Defendants could have provided Aggrieved  
13 Employees with a resting facility within Defendants’ facilities/locations with reasonable or no  
14 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g.  
15 a breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to  
16 resting, including but not limited to leaning up against the wall, or search for facilities outside of  
17 Defendants’ premises which are not designated or reserved for their rest, such as their personal  
18 vehicles.

19         67. Defendants did not provide Aggrieved Employees with suitable resting facilities  
20 during their hours of work, particularly during meal and/or rest periods.

21         68. Defendants’ failure to provide suitable resting facilities to Aggrieved Employees  
22 violated and continues to violate the applicable Wage Order, section 13(B) and the California Labor  
23 Code, including but not limited to section 1198.

24         **69. Inaccurate Wage Statements.**

25         70. California law provides that, at the time of each payment of wages, the employer  
26 must provide each employee with an itemized statement showing, inter alia, gross wages earned,  
27 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the  
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1 employee is being paid, the employee's name and last four digits of their social security number,  
2 the name and address of the legal entity that it is the employer, all applicable hourly rates in effect  
3 during the pay period and all hours worked at each rate, and the rate of pay and total hours worked  
4 for each temporary services assignment. Defendants knowingly and intentionally failed to provide  
5 Plaintiffs and the Aggrieved Employees with proper, itemized pay stubs/wage statements as the  
6 pay stubs/wage statements provided by Defendants do not accurately reflect all applicable hourly  
7 rates in effect during each pay period, all hours worked at each applicable hourly rate, the rate of  
8 pay and total hours worked for each temporary services assignment, and all sick time pay. Notably,  
9 Defendants' pay stubs do not reflect an accurate overtime rate of pay because instead of multiplying  
10 the regular rate of pay by one and one-half, the pay stubs provide two overtime rate categories and  
11 they each provide corresponding rates that are either the same as the regular rate or list no separate  
12 rate for the overtime requiring Plaintiffs and similarly aggrieved employees to perform extensive  
13 calculations to determine what their pay rates were for each corresponding hour worked. *See, e.g.,*  
14 *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). Moreover, the wage statements  
15 provided Plaintiffs and similarly aggrieved employees fail to list the rate(s) of pay and the total  
16 hours worked for each temporary services assignment, in violation of Labor Code section 226.

17 71. As such, Defendants issued wage statements to Aggrieved Employees that did not  
18 include all of the statutorily required information, including but not limited to, the correct name  
19 and/or address of the legal entity that is the employer.

20 72. Based on further information and belief, Defendants issued wage statements to  
21 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential  
22 wages were paid in violation of Labor Code section 226.

23 73. As a result, Defendants issued wage statements to Plaintiffs and Aggrieved  
24 Employees that were not accurate and did not include all of the statutorily required information. As  
25 such, Defendants violated Labor Code section 226.

26 74. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from  
27 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer  
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1 to said employee.” Based on information and belief Defendants made unlawful deductions from  
2 Aggrieved Employees paychecks during the relevant period including but not limited to, deducting  
3 costs of uniforms and/or other business costs and/or deducting wages for purported overpayments  
4 from previous pay periods and/or unlawfully deducting wages for negligently damaged property.  
5 Such a practice is in violation of including but not limited to, Labor Code sections 221-222 which  
6 subjects Defendants to civil penalties under Labor Code section 2699, et seq..

7         75.     **Inaccurate Records.** Based on the above-described unlawful policies and practices,  
8 Defendants failed and continue to fail to keep accurate and complete payroll records as required by  
9 Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders. Defendants  
10 failed, and continue to fail, to keep accurate and complete payroll records as required by law,  
11 including but not limited to the following records: total daily hours worked, applicable rates of pay,  
12 time records showing when Plaintiffs and other Aggrieved Employees began and ended each work  
13 period, time records of meal periods, and accurate itemized wage statements.

14         76.     Defendants have failed and continues to fail to keep accurate and complete records  
15 showing total hours worked by virtue of Defendants’ time rounding, automatic meal period  
16 deductions, failure to relieve Plaintiffs and Aggrieved Employees of all duties and employer control  
17 during unpaid meal periods, failure to record the true start and end times of meal periods, shift start  
18 times and shift end times, and other off-the-clock work policies and practices described herein.

19         77.     **Unreimbursed Business Expenses.** Based on information and belief, Defendants  
20 required Plaintiffs and other Aggrieved Employees to incur business expenses as a direct  
21 consequence of the performance of their job duties without providing reimbursement, in violation  
22 of Labor Code section 2802. Based on information and belief, Plaintiffs and other Aggrieved  
23 Employees were improperly required to provide and maintain work tools that are supposed to be  
24 the responsibility of the employer.

25         78.     Based on information and belief, Defendants shifted the costs of doing business onto  
26 Aggrieved Employees by requiring them to pay for business expenses, including but not limited to,  
27 uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved  
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1 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related  
2 purposes, including but not limited to, to receive and respond to work-related messages and/or  
3 phone calls.

4 79. For example, based on information and belief, Aggrieved Employees were required  
5 to receive and respond to work-related calls and/or messages from supervisors and/or other  
6 Aggrieved Employees regarding scheduling and/or other work tasks but were not reimbursed by  
7 Defendants at all and/or in full for these business expenses.

8 80. For example, Defendants required Plaintiff WRIGHT to use her personal cell  
9 phone/mobile device to download and use work-related applications, including but not limited to,  
10 employee timekeeping applications, however, Defendants did not provide Plaintiff WRIGHT with  
11 any and/or full reimbursement for this business use of Plaintiff WRIGHT's personal cell  
12 phone/mobile device, in violation of California law, including but not limited to, California labor  
13 code section 2802.

14 81. For example, Defendants required Plaintiff GREGORY to use her personal cell  
15 phone/mobile device to download and use work-related applications, including but not limited to,  
16 employee timekeeping applications, however, Defendants did not provide Plaintiff GREGORY  
17 with any and/or full reimbursement for this business use of Plaintiff GREGORY's personal cell  
18 phone/mobile device, in violation of California law, including but not limited to, California labor  
19 code section 2802.

20 82. Based on information and belief, Defendants required Aggrieved Employees to  
21 work remotely, including but not limited to, from their homes. As a result of working from home,  
22 Aggrieved Employees were required to use their home internet, electricity, and other utilities in the  
23 discharge of their job duties. Based on information and belief, Defendants lacked and continues to  
24 lack a policy to reimburse employees who regularly increased utility expenses as a result of working  
25 from home. Aggrieved Employees' increased utility and internet expenses were expenses for which  
26 Defendants were required to reimburse Aggrieved Employees a reasonable percentage based on  
27 their required business use because said expenses were necessarily incurred by Aggrieved  
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1 Employees as a direct consequence of the discharge of their duties of employment. Based on  
2 information and belief, Defendants failed and continue to fail to reimburse Aggrieved Employees  
3 for all business expenses incurred as a result of Defendants' requirement that they work remotely  
4 from their homes, including without limitation, cost of home internet, electricity, and other utilities  
5 incurred as a direct consequence of the discharge of their job duties.

6 83. For example, Plaintiff GREGORY was required to perform at least eight (8) hours  
7 of off-the-clock work in the form of including but not limited to, watching videos, reading training  
8 manuals, and/or taking tests usually if not always remotely from Plaintiff GREGORY's home  
9 outside of scheduled shift times as required by Defendants, however, Defendants failed to provide  
10 Plaintiff GREGORY with any reimbursement for business expenses Plaintiff GREGORY incurred  
11 as a result of performing work remotely as required by Defendants, in violation of California law,  
12 including without limitation, California Labor Code section 2802.

13 84. Based on information and belief, Aggrieved Employees were not reimbursed for the  
14 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform  
15 their assigned job duties and/or for the costs of purchasing and/or maintaining work  
16 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

17 85. Based on information and belief, at times, Aggrieved Employees were not  
18 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or  
19 cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use  
20 their personal vehicles in carrying out the duties assigned to them by Defendants.

21 86. For example, Plaintiff WRIGHT was required to drive between Defendants stores,  
22 facilities and/or locations during Plaintiff WRIGHT's shifts and/or was required to drive from one  
23 store/facility to cover a second shift at a different store / facility, however, Defendants did not  
24 provide Plaintiff WRIGHT with any and/or full reimbursement for these personal vehicle and/or  
25 travel-related business expenses.

26 87. As such, Defendants failed to compensate Aggrieved Employees at the legally  
27 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant  
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1 period.

2 88. As explained above, based on information and belief, Aggrieved Employees were  
3 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost  
4 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal  
5 protective/safety gear.

6 89. Based on information and belief, Defendants regularly failed to reimburse and  
7 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section  
8 2802, Plaintiffs and Aggrieved Employees were entitled to be reimbursed for all reasonable  
9 expenses associated with carrying out Defendants' orders and/or carrying out the duties assigned  
10 by Defendants.

11 90. Defendants' failure to provide Aggrieved Employees with full reimbursement for  
12 all reasonable expenses associated with carrying out their duties required that Aggrieved  
13 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code  
14 section 2802.

15 91. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,  
16 provides as follows:

17 92. (A) Each workday an employee is required to report for work and does report, but  
18 is not put to work or is furnished less than half said employee's usual or scheduled day's work, the  
19 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two  
20 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be  
21 less than the minimum wage. (B) If an employee is required to report for work a second time in any  
22 one workday and is furnished less than two (2) hours of work on the second reporting said employee  
23 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the  
24 minimum wage.

25 93. Aggrieved Employees were not paid reporting time wages in accordance with  
26 California law, including but not limited to the applicable IWC Wage Order. For example, based  
27 on information and belief, at times, Aggrieved Employees reported to work for a scheduled shift  
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1 but were sent home and/or were not put to work and were not paid all owed reporting time pay  
2 wages in accordance with California law.

3 94. Based on information and belief, Defendants have a policy and practice of failing to  
4 pay all reporting time wages to Aggrieved Employees, in violation of California law, including but  
5 not limited to, the applicable IWC Wage Order, Section 5. Defendants' failure to pay all reporting  
6 time wages to Aggrieved Employees violated and continues to violate the applicable Wage Order,  
7 and the California Labor Code, including but not limited to section 1198.

8 95. **Violation of California Day of Rest Law.** Under California law, every employee  
9 in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause"  
10 its employees "to work more than six days in seven." See Labor Code Sections 551 and 552. Labor  
11 Code section 553 provides that a violation of the foregoing sections is a misdemeanor. Based on  
12 information and belief, Defendants have and continue to have a uniform policy and practice of  
13 requiring Aggrieved Employees to work at least seven days consecutively in a workweek, in  
14 violation of including but not limited to, Labor Code Section 551. Based on information and belief,  
15 Plaintiffs and/or other Aggrieved Employees were suffered, permitted, or required to work at least  
16 seven (7) days consecutively in a workweek, in violation of California law, including but not  
17 limited to Labor Code Section 551.

18 96. **Sick Pay Leave Violations.** Defendants failed to provide Plaintiffs and the  
19 Aggrieved Employees paid sick days in accordance with Labor Code sections 245 through 248.5,  
20 further failing to put them on notice of their paid sick leave rights—or thereby putting their  
21 entitlement to sick leave in a Labor Code section 2810.5 notice. Defendants failed to maintain  
22 accurate records documenting the hours worked and paid sick days accrued and used by employees  
23 in violation of Labor Code section 247.5, permitting the presumption that Plaintiffs and the  
24 Aggrieved Employees were entitled to the maximum number of hours accruable under this article  
25 at the time of their respective separations of employment. By failing to pay sick leave at all and or  
26 by failing to account for/incorporate into the sick pay calculation the true hours Plaintiffs and the  
27 Aggrieved Employees worked, Defendants unlawfully retained and continue to retain paid sick  
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1 leave that should have been paid and was not. Accordingly, Defendants have violated California's  
2 paid sick leave laws as to Plaintiffs and the Aggrieved Employees. These violations subject  
3 Defendants to civil penalties under the Labor Code, including without limitation Labor Code  
4 sections 246, 247, 248.5, and 2699, et seq.. Each violation of each Labor Code section and Wage  
5 Order provision, for each aggrieved employee, results in a separate civil penalty.

6 97. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides  
7 that all employers with 26 or more employees are required to provide up to 80 hours for covered  
8 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care  
9 for a family member or if it is vaccine-related. Based on information and belief, Defendants  
10 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-  
11 19 Supplemental Paid Sick Leave. Based on information and belief, Defendants failed to provide  
12 Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

13 98. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,  
14 employees shall be provided with suitable seats when the nature of the work reasonably permits the  
15 use of seats and when they are not actively engaged in the work duties that would not permit them  
16 to be seated.

17 99. All applicable IWC Wage Orders, Section 14(A-B) provides:

18 (A) All working employees shall be provided with suitable seats when  
19 the nature of the work reasonably permits the use of seats.

20 (B) When employees are not engaged in the active duties of their  
21 employment and the nature of the work requires standing, an adequate number of  
22 suitable seats shall be placed in reasonable proximity to the work area and  
23 employees shall be permitted to use such seats when it does not interfere with the  
24 performance of their duties.

25 include Suitable seating is one of the worker protections covered by  
26 California's Wage Orders, which have the same dignity as statutes, are remedial in  
27 nature and are to be broadly construed to effectuate the goal of protecting the  
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1 comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53  
2 Cal.4th 1004, 1027 (2012).

3 100. Based on information and belief, Defendants failed to provide Aggrieved  
4 Employees with suitable seating, and when such employees were not engaged in duties which  
5 required them to stand, no seating was placed in reasonable proximity to their workstations.

6 101. Moreover, based on information and belief, the nature of the work reasonably  
7 permitted the use of seats for at least part of the time that Aggrieved Employees were working.  
8 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties  
9 of their employment, yet there were no suitable seats in reasonable proximity to the work area and  
10 use of seats would not interfere with the performance of their duties.

11 102. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,  
12 Defendants have and continue to have a uniform policy and practice of failing to allow Aggrieved  
13 Employees to use their earned vacation/paid time off during their employment and/or failing to pay  
14 all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off  
15 paid at the final rate including non-discretionary compensation, including but not limited to, shift  
16 differentials) to Aggrieved Employees upon separation of employment, in violation of California  
17 law, including but not limited to, Labor Code section 227.3.

18 103. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on  
19 information and belief, Defendants failed to timely pay Aggrieved Employees all wages that were  
20 due and owing upon termination or resignation. Based on information and belief, Defendants  
21 untimely provide final wages to Aggrieved Employees without regard to the timing requirements  
22 of Labor Code sections 201-202.

23 104. Upon separation of employment, Aggrieved Employees' final paychecks were not  
24 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.  
25 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed  
26 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,  
27 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly  
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1 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate  
2 including non-discretionary compensation, including but not limited to, shift differentials). For  
3 example, Defendants did not furnish Plaintiff WRIGHT with any final paycheck for at least  
4 approximately several days following Plaintiff WRIGHT's date of termination, and Plaintiff  
5 WRIGHT's late final paycheck was devoid of all wages owed including without limitation, all  
6 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or  
7 paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation  
8 pay/paid time off paid at the final rate including non-discretionary compensation, including but not  
9 limited to, shift differentials). Similarly, upon separation of employment, DEFENDANTS failed  
10 to timely furnish Plaintiff GREGORY with any final paycheck and/or Plaintiff GREGORY's final  
11 paycheck was devoid of all wages owed including without limitation, all owed minimum wages,  
12 overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at  
13 the properly accrued rates, (including but not limited to, all owed vacation pay/paid time off paid  
14 at the final rate including non-discretionary compensation, including but not limited to, any shift  
15 differentials).

16 105. Based on information and belief, Defendants have a policy and practice of requiring  
17 Aggrieved Employees to wait until the next regularly scheduled pay date to receive their final  
18 paychecks without regard for the timing requirements as set forth under Labor Code sections 201  
19 and 202, resulting in Defendants' failure to timely issue Aggrieved Employees their final  
20 paychecks, in violation of Labor Code section 201 and/or 202 and resulting in penalties under Labor  
21 Code section 203.

22 106. Based on further information and belief, Defendants failed to timely provide all  
23 owed wages immediately upon discharge of employment. Based in information and belief, at times,  
24 Aggrieved Employees experienced breaks in employment caused by Defendants whereby  
25 Aggrieved Employees would not be called in for work for longer than a single pay period due to  
26 including but not limited to Defendants' lack of work or lack of assignments. Such instances qualify  
27 as a discharge of employment. Yet, Defendants failed to timely pay all owed wages at the end of  
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1 such periods of employment, in violation of including but not limited to Labor Code section 201-  
2 202.

3 107. **Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every  
4 employee who is discharged shall be paid at the place of discharge, and every employee who quits  
5 shall be paid at the office or agency of the employer in the county where the employee has been  
6 performing labor. All payments shall be made in the manner provided by law.

7 108. Based on information and belief, Defendants have a policy and practice of failing to  
8 provide Aggrieved Employees who are terminated with their final paychecks at the place of  
9 discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the office  
10 or agency of Defendants in the county where the work was performed, in violation of Labor Code  
11 Section 208.

12 109. **Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.**  
13 Based on information and belief, Defendants required Aggrieved Employees to agree in writing to  
14 unlawful conditions of employment including but not limited to unlawful non-solicitation/non-  
15 compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases  
16 and/or waivers, including but not limited to unlawful meal period waivers, unlawful forum selection  
17 clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial  
18 checks as a condition of obtaining and/or continuing employment in violation of Labor Code  
19 section 432.5.

20 110. Based on information and belief, Defendants ordered unlawful financial credit  
21 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required  
22 Aggrieved Employees to provide ongoing written consent to the unlawful credit checks as a  
23 condition of employment, in violation of California and Federal law, which results in a further  
24 violation of Labor Code section 432.5.

25 111. Based on information and belief, Defendants also required Aggrieved Employees to  
26 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of  
27 obtaining and/or holding employment in violation of the Investigative Consumer Reporting  
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1 Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act  
2 (FC-A - 15 U.S.C. section 1681, et seq.). Based on information and belief, Defendants failed and  
3 continue to fail to comply with the requirements of the ICRAA and FCRA when conducting  
4 background screenings for applicants, including but not limited to Aggrieved Employees that were  
5 subject to a background check as a condition of employment during the application phase.

6 112. Based on information and belief, Defendants required Aggrieved Employees to  
7 agree in writing to a background check which failed to abide by the requirements set forth in CA  
8 Civil Code section 1786, et seq. and 15 U.S.C. section 1681, et seq., including but not limited to by  
9 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,  
10 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose  
11 for the background check, failing to provide a summary of rights under the ICRAA and/or the  
12 FRCA, failing to provide a way by which the individual could request a copy of the report, failing  
13 to disclose the name, address, and telephone number of the third party preparing the report, and  
14 failing to properly obtain authorization or consent to such a background check, and thus was an  
15 unlawful background check.

16 113. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or  
17 financial checks not in conformance with the applicable laws, Defendants violated Labor Code  
18 section 432.5.

19 114. Based on further information and belief, Defendants also required Aggrieved  
20 Employees to agree in writing to provide ongoing consent to Defendants to conduct background  
21 checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or  
22 other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring  
23 applicants and employees to agree to an unlawful provision as a condition of employment.

24 115. Based on further information and belief, Defendants knew that requiring Aggrieved  
25 Employees to agree to unlawful criminal and/or financial background checks as a condition of  
26 obtaining and/or holding employment was unlawful.

27 116. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a  
28

1 condition of employment, Defendants violated Labor Code section 432.5.

2 *Unlawful Inquires into Criminal History*

3 117. Labor Code section 432.7 prohibits an employer from asking applicants about past  
4 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on  
5 information and belief, Defendants asked Aggrieved Employees about arrests not resulting in  
6 convictions on its employment application, in violation of California law.

7 118. Upon information and belief, Defendants, in violation of California law, including  
8 but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”),  
9 asked Aggrieved Employees about convictions prior to extending an offer of employment and/or  
10 otherwise impermissibly inquired into criminal history on its employment application in violation  
11 of California law, and in violation of Labor code section 432.5.

12 *Unlawful PAGA Waiver*

13 119. Additionally, Defendants violated Labor Code section 432.5 by requiring Aggrieved  
14 Employees to agree in writing to other unlawful agreements, including but not limited to, an  
15 unlawful waiver of PAGA and or representative actions as a condition of employment.

16 120. An action pursuant to PAGA “...is a representative action on behalf of the state”  
17 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements  
18 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and  
19 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384  
20 (“We conclude that where, as here, an employment agreement compels the waiver of representative  
21 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

22 121. Moreover, the California Supreme Court has ruled that a court cannot compel  
23 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as  
24 an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There  
25 is no individual component to a PAGA action because ‘every PAGA action ... is a representative  
26 action on behalf of the state.’”).

27 122. Upon information and belief, Defendants required Aggrieved Employees to agree  
28

1 in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring  
2 Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, Defendants required  
3 written agreement to an unlawful provision as a condition of employment which is a violation of  
4 labor code section 432.5.

5 123. During Plaintiffs' employment, Defendants failed to provide paid sick leave in  
6 accordance with California law. Based on information and belief, Defendants either failed to  
7 provide paid sick leave at all or improperly accrued the amount of sick leave pay owed Plaintiffs  
8 for failure to base the owed sick leave pay on the correct number of hours worked. On further  
9 information and belief, Defendants failed to provide notice of the correct sick leave amount balance  
10 available to Plaintiffs.

11 124. Defendants failed to provide wage statements that complied with Labor Code  
12 section 226. Among other things, Plaintiffs' paystubs do not accurately reflect all applicable hourly  
13 rates in effect during each pay period, all hours worked at each applicable hourly rate, the rate of  
14 pay and total hours worked for each temporary services assignment, and all sick time pay. Notably,  
15 Defendants' pay stubs do not reflect an accurate overtime rate of pay because instead of multiplying  
16 the regular rate of pay by one and one-half, the pay stubs provide two overtime rate categories, and  
17 they each provide corresponding rates that are either the same as the regular rate or list no separate  
18 rate for the overtime requiring Plaintiffs to perform extensive calculations to determine what her  
19 pay rate was for each corresponding hour worked. *See, e.g., McKenzie v. Fedex*, 765 F. Supp. 2d  
20 1222 (C.D. Cal. 2011). Moreover, the wage statements provided Plaintiffs fail to list the rate of  
21 pay and the total hours worked for each temporary services assignment, including but not limited  
22 to, with respect to Plaintiffs' temporary assignment to Sam's Club. Accordingly, Defendants have  
23 violated Labor Code section 226 as to Plaintiffs.

24 125. Plaintiffs bring this complaint under the Private Attorneys General Act of 2004,  
25 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State of  
26 California, regarding violations of the Labor Code as to all similarly aggrieved individuals  
27 employed by Defendants in the State of California as a non-exempt employee. This action is  
28

1 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

2 126. During the period beginning one-year period preceding the filing of the required  
3 PAGA notice with the Labor Workforce and Development Agency, and continuing through the  
4 present, as alleged herein, Defendants violated Labor Code sections 226, 226.8, 245-248.5, 2810.5,  
5 201-203, 208, 210, 216, 221-223, 225.5, 226.7, 245-248.6, 256, 351, 432, 432.5, 432.7, 510, 511,  
6 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, et seq., 2699.3, and  
7 2802, all relevant sections of the applicable Wage Orders, and all applicable sections of the  
8 California Code of Regulations, as to Plaintiffs and all Aggrieved Employees employed by  
9 Defendants who worked as non-exempt employees. These violations subject Defendants to civil  
10 penalties as set forth in the foregoing statutes as well as other provisions of the Labor Code,  
11 including without limitation Labor Code section 2699, et seq.

12 **THE “AGGRIEVED EMPLOYEES”**

13 127. Plaintiffs bring this action on behalf of themselves and all similarly situated  
14 aggrieved employees. The other Aggrieved Employees shall be defined as follows: “All non-  
15 exempt or hourly employees who were employed in California by Defendants at any time within  
16 the one year and sixty-five days prior to the filing of the initial complaint.”

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**  
19 **LABOR CODE SECTIONS 2698, ET SEQ.**

20 128. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

21 **Failure to Keep Accurate Records**

22 129. California Labor Code § 1174 requires employers to keep “accurate and complete”  
23 payroll records showing, among other things, the hours worked daily by all non-exempt employees.  
24 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the  
25 times during which all owed meal periods were provided each day.

26 130. At all relevant times, Defendants failed, and continues to fail, to keep accurate and  
27 complete records as required by law, including but not limited to the following records: total daily  
28

1 hours worked, applicable rates of pay, time records showing when Plaintiffs and other Aggrieved  
2 Employees began and ended each work period, time records of meal periods, and accurate itemized  
3 wage statements.

4 131. Defendants' failure to keep "accurate and complete" payroll records for Plaintiffs  
5 and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all applicable Wage  
6 Orders, section 7. These violations subject Defendants to civil penalties under Labor Code §§ 558.1,  
7 226.6, 1174.5 and 2699, et seq. Each violation of each Labor Code section and Wage Order  
8 provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay period  
9 during which the referenced statutes and Wage Order provisions were violated.<sup>1</sup>

10 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

11 132. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage  
12 Orders, section 7 require that employers keep the following information on file for each employee  
13 for a minimum of three years: The employee's dates of employment; the employee's hourly rates  
14 and the corresponding number of hours worked by the employee at each hourly rate, when the  
15 employee begins and ends each work period (including meal periods) and split intervals; total hours  
16 worked by the employee; all deductions; gross wages earned; and net wages earned.

17 133. Section (b) of Labor Code section 226 further requires employers to "afford current  
18 and former employees the right to inspect or receive a copy of records pertaining to their  
19 employment upon reasonable request to the employer." Section (c) of Labor Code section 226  
20 provides that, "an employer who receives a written or oral request to inspect or receive a copy of  
21 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with  
22 the request as soon as practicable, but no later than 21 calendar days from the date of the request.  
23 A violation of this subdivision is an infraction." An employer's failure to comply within this

24  
25 <sup>1</sup> Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period");  
26 Labor Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which  
27 the employee was underpaid"); All applicable wage orders, § 20 (establishing that "in addition to any other civil  
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes  
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for  
each pay period during which the employee was underpaid") (emphasis added).

1 timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)  
2 penalty from the employer. Lab. Code section 226(f).

3 134. Personnel Records. In addition to their right to time and pay records, employees,  
4 and their representatives, have the right to inspect and receive a copy of their personnel files  
5 pursuant to Labor Code section 1198.5. This statute applies to both former and current employees.  
6 Labor Code section 432 further specifies that employers must furnish copies of all employment  
7 records bearing the employee's signature. Labor Code section 1198.5 also requires that the file be  
8 made available for inspection or receipt within a "reasonable" amount of time, but "not later than  
9 30 calendar days from the date the employer receives a written request." An employer's failure to  
10 comply within this timeframe likewise entitles a current or former employee to recover a seven  
11 hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

12 135. Based on information and belief, Defendants failed to timely produce or make  
13 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant  
14 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations  
15 subject Defendants to penalties under Labor Code sections 226, 1198.5, and 2699, et seq.

16 **Meal Period Violations**

17 136. California law requires employers to provide employees a duty-free, uninterrupted  
18 thirty (30) minute meal period when an employee works more than five (5) hours in a workday,  
19 and it must be provided within the first five (5) hours the employee works. Lab. Code section 512  
20 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v.*  
21 *Superior Court* (2012) 53 Cal.4<sup>th</sup> 1004.

22 137. Employers must also provide employees with a second duty-free, uninterrupted  
23 thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it  
24 must be provided before the end of the 10<sup>th</sup> hour of work. *Ibid.*

25 138. Employers covered by any and all applicable IWC Wage Orders have an obligation  
26 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),  
27 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is  
28

1 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)  
2 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4<sup>th</sup> 1004, 1052-1053, citing  
3 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a  
4 rebuttable presumption arises that the employee was not relieved of duty and no meal period was  
5 provided”).

6 139. Employers must pay employees an additional hour of wages at the employees’  
7 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted  
8 meal period, first meal period provided after five (5) hours, second meal period provided after 10  
9 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to  
10 provide an employee a meal period in accordance with the applicable provision of this Order, the  
11 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation  
12 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4<sup>th</sup> 1004.

13 140. As explained above, Plaintiffs and other Aggrieved Employees were consistently  
14 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often  
15 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of  
16 their meal periods due to understaffing, the nature and constraints of their job duties, and/or  
17 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal  
18 periods completely.

19 141. Based on information and belief, Defendants had and continues to have a policy of  
20 rounding the start and end times of employees’ meal periods and/or automatically deducting thirty  
21 minutes per shift despite having actual and/or constructive knowledge that Plaintiffs and Aggrieved  
22 Employees did not receive compliant meal periods.

23 142. Based on information and belief, Plaintiffs and Aggrieved Employees did not  
24 execute valid on-duty meal period waivers or on-duty meal period agreements that complied with  
25 California law. California law requires that meal period waivers be in a written agreement that is  
26 signed by both the employee and employer voluntarily. The agreement must state that the employee  
27 may revoke the agreement at any time. Plaintiffs and other Aggrieved Employees did not execute  
28

1 valid meal period waivers.

2 143. Moreover, based on information and belief, Aggrieved Employees did not receive a  
3 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

4 144. Plaintiffs is informed and believes and thereon alleges that Defendants had actual  
5 and/or constructive knowledge that its time-rounding and auto-deduction policies and practices,  
6 other unlawful policies and practices resulted in the denial of compliant meal periods in violation  
7 of California's meal period laws.

8 145. Defendants also failed to pay premiums for missed/otherwise unlawful meal periods  
9 in violation of California law and/or failed to pay the proper meal period premium for failure to  
10 incorporate all non-discretionary remuneration including but not limited to, bonuses, shift  
11 differential pay and/or other non-discretionary compensation into the regular rate or compensation  
12 for purposes of calculating the owed meal period premium.

13 146. These unlawful meal period policies and practices result in violations of Labor Code  
14 sections 204, 223, 226.7, 512, and 1198-1199, all applicable wage orders, § 11, and all applicable  
15 sections of the California Code of Regulations. These violations subject Defendants to civil  
16 penalties under Labor Code §§ 210, 225.5, 558, 558.1, 2699, et seq., and all applicable Wage  
17 Orders, § 20. These practices result in further violations such as violations of Labor Code § 1174  
18 as discussed above, 1198-1199, 226.6 and other violations discussed below.

19 **Rest Period Violations**

20 147. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer  
21 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours  
22 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period  
23 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4<sup>th</sup> 1004 (2012),  
24 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for  
25 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up  
26 to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.*  
27 at 1029). The rest period requirement obligates employers to permit and authorize employees to  
28 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish

1 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5  
2 Cal.5th 257. If the employer fails to provide any required rest period, the employer must pay the  
3 employee one hour of pay at the employee's regular rate of compensation for each workday the  
4 employer did not provide at least one legally required rest period, pursuant to Labor Code section  
5 226.7, and applicable IWC Wage Order, §12(B).

6 148. Moreover, under California law rest periods must be a "net" ten minutes in a suitable  
7 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards  
8 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest  
9 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from  
10 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,  
11 which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what  
12 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest  
13 in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199  
14 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest  
15 periods] to its employees.").

16 149. Plaintiffs and the Aggrieved Employees did not receive legally compliant, timely  
17 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained  
18 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject  
19 to Defendants' control due to the nature and constraints of Aggrieved Employees' job duties,  
20 understaffing, and/or commentary from supervisors pressuring Plaintiffs and Aggrieved Employees  
21 to skip rest periods completely or otherwise take non-compliant rest periods.

22 150. Based on information and belief, Defendants implemented policies and/or practices  
23 that failed to relieve Plaintiffs and other Aggrieved Employees of all duties and employer control  
24 during rest periods. Based on further information and belief, Aggrieved Employees were pressured  
25 to complete their work duties according to a designated schedule such that rest periods were only  
26 taken once tasks were completed, and/or as time permitted.

27 151. As a result, Plaintiffs and Aggrieved Employees did not receive legally compliant  
28

1 first, second, or third rest periods as required by California law.

2 152. Moreover, based on information and belief, Defendants failed to pay a rest period  
3 premium to Plaintiffs and other Aggrieved Employees for each workday in which there was a  
4 missed or otherwise unlawful rest period. Based on further information and belief, when a rest  
5 premium was paid, Defendants failed to include non-discretionary compensation including but not  
6 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the  
7 regular rate of compensation for purposes of determining the owed rest period premium.

8 153. As such, Defendants violated Labor Code sections 204, 223, 226.7, and 1198-1199,  
9 all applicable IWC Wage Orders, §12, and all applicable sections of the California Code of  
10 Regulations. These violations subject Defendants to civil penalties under Labor Code §§ 210,  
11 225.5, 558, 2699, et seq., and all applicable Wage Orders, §20.

12 **Failure to Provide Suitable Resting Facilities**

13 154. Per section 13 of all applicable IWC Wage Orders, employees shall be provided  
14 with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting  
15 facilities shall be provided in an area separate from the toilet rooms and shall be available to  
16 employees during work hours.”

17 155. Defendants’ locations/facilities are generally similar in layout and design, and there  
18 was, and continues to be, space that allows for a resting facility that employees may use to cease  
19 work and recover during meal or rest periods. Defendants could have provided Aggrieved  
20 Employees with a resting facility within Defendants’ facilities/locations with reasonable or no  
21 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g.  
22 a breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to  
23 resting, including but not limited to leaning up against the wall, or search for facilities outside of  
24 Defendants’ premises which are not designated or reserved for their rest, such as their personal  
25 vehicles.

26 156. Defendants did not provide Aggrieved Employees with suitable resting facilities  
27 during their hours of work, particularly during meal and/or rest periods.

28 157. Defendants’ failure to provide suitable resting facilities to Aggrieved Employees

1 violated and continues to violate the applicable Wage Order, section 13(B) and the California Labor  
2 Code, including but not limited to section 1198.

3 **Minimum and Overtime Wage Violations**

4 158. California Labor Code section 218 and 218.5 provide a right of action for  
5 nonpayment of wages. California Labor Code section 222 prohibits the withholding on part of a  
6 wage and Labor Code section 223 prohibits payment of less than a statutory or contractual wage.  
7 California law provides that employees in California must be paid for all hours worked, up to forty  
8 (40) hour per week or eight (8) hours per day, at a regular rate that is no less than the mandated  
9 minimum wage. See Labor Code section 1197 and the applicable Wage Order. The minimum wage  
10 standard applies to each hour employees worked for which they were not paid. Therefore, an  
11 employer's failure to pay for any particular hour worked by an employee is unlawful even if  
12 averaging an employee's total pay over all hours worked, paid or not, results in an average hourly  
13 wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Labor  
14 Code section 1194 states that an employee receiving less than the legal minimum wage is entitled  
15 to recover in a civil action the unpaid balance of the minimum wage and Labor Code section 1194.2  
16 permits recovery of liquidated damages in an amount equal to the unpaid wages.

17 159. California law also provides that employees in California must be paid overtime,  
18 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per  
19 week or 8 hours per day. See Labor Code 510 and the applicable Wage Order section 3. Employers  
20 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond  
21 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh  
22 consecutive day of work in a work week. *Ibid.*

23 160. As explained above, Defendants violated California's minimum and overtime wage  
24 laws by failing to compensate Plaintiffs and the Aggrieved Employees for all hours worked by  
25 virtue of, among other things, Defendants' time rounding policies and practices (for shift start and  
26 end times and meal period start and end times), payment according to scheduled hours worked,  
27 automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during meal  
28 periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful

1 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

2 161. Defendants had and continues to have a policy of failing to pay Plaintiffs and  
3 Aggrieved Employees for all hours worked.

4 162. Based on information and belief, Defendants had actual or constructive knowledge  
5 that its time-rounding policies and practices, auto-deduction policies and practices for meal periods,  
6 payment according to scheduled hours, failure to relieve employees of all duties and employer  
7 control during unpaid meal periods, and/or other off-the-clock work resulted in the underpayment  
8 of minimum and overtime wages owed to Plaintiffs and other Aggrieved Employees.

9 163. Based on information and belief, Defendants failed and continues to fail to pay a  
10 premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours  
11 in a week.

12 164. Based on information and belief, Defendants failed to pay twice Aggrieved  
13 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for  
14 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in  
15 violation of California's overtime laws.

16 165. Based on information and belief, Defendants also violated California's overtime  
17 laws as to those Aggrieved Employees that were subject to an AWS but were required to work a  
18 short shift. Under Section(B)(2) of all applicable IWC Wage Orders, "[i]f an employer, whose  
19 employees have adopted an alternative workweek agreement permitted by this order requires an  
20 employee to work fewer hours than those that are regularly scheduled by the agreement, the  
21 employer shall pay the employee overtime compensation at a rate of one and one-half times the  
22 employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the  
23 employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee  
24 is required to work the reduced hours."

25 166. Based on information and belief, Aggrieved Employees that were subject to an AWS  
26 worked a short shift on various diverse dates during the relevant period. On those shifts, Aggrieved  
27 Employees were entitled to overtime wages at 1.5 times their regular rate of pay for all hours  
28 worked over eight hours in the shortened shift. Instead, Defendants paid Aggrieved Employees at

1 their base rate for all hours worked on the shortened shift, in violation of California's overtime laws.

2 167. Based on information and belief, Defendants further violated California's overtime  
3 wage laws by failing to incorporate all non-discretionary compensation, including but not limited  
4 to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary  
5 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to  
6 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of  
7 the overtime wage rate, resulting in the underpayment of overtime wages owed to Plaintiffs and  
8 other Aggrieved Employees.

9 168. This conduct results in violations of Labor Code sections 204, 218, 218.5, 223, 510,  
10 511, 558, 558.1, 1194, 1194.2, 1197, 1198-1199, all applicable Wage Orders, and all applicable  
11 sections of the California Code of Regulations. These violations subject Defendants to civil  
12 penalties under Labor Code sections 210, 218.5, 225.5, 558, 558.1, 1197.1, 2699, et seq., 2699.3,  
13 2699.5, and all applicable IWC Wage Orders, section 20.

14 **Statutory Wage Violations**

15 169. California Labor Code section 223 makes it unlawful for an employer to secretly  
16 pay wages lower than required by statute while purporting to pay legal wages. As described above,  
17 Defendants willfully and systematically denied Plaintiffs and Aggrieved Employees of all earned  
18 minimum and overtime compensation for all hours worked which resulted in the payment of less  
19 than statutorily required wages. Defendants acted with the intent to deprive them of statutory wages,  
20 including, but not limited to, minimum and overtime wages, to which they were entitled to under  
21 California law. Thus, Defendants paid Plaintiffs and other Aggrieved Employees lower wages than  
22 those they were entitled to while purporting that Plaintiffs and other Aggrieved Employees were  
23 properly paid. As a result, Plaintiffs and other Aggrieved Employees are entitled to recover  
24 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

25 **Refusal to Make Payment**

26 170. Labor Code section 216 declares unlawful an employer's refusal to pay wages due  
27 and payable and/or the denial of the validity of any claim to wages due. Defendants violated and  
28 continue to violate this section by failing to pay Plaintiffs and Aggrieved Employees for all hours

1 worked at the proper wage rate and by failing to pay an additional hour of pay for each meal/rest  
2 period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries, Inc.*  
3 (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject Defendants to civil penalties  
4 under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each  
5 Aggrieved Employee, for each pay period during which the statute provisions were violated.<sup>2</sup>

6 **Standard Conditions of Labor Violations**

7 171. Together, Labor Code sections 1198 and 1199 make unlawful any employment of  
8 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,  
9 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including  
10 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Defendants’  
11 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,  
12 minimum/overtime wages and other violations described herein result in separate violations of  
13 sections 1198 and 1199, which subject Defendants to civil penalties under Labor Code sections  
14 1197.1 and 2699, et seq.

15 **Business Expense Violations**

16 172. California law requires employers to indemnify their employees for all necessary  
17 expenditures incurred by the employee in direct consequence of the discharge of their duties or of  
18 their obedience to the directions of the employer. *See* Cal. Lab. Code section 2802 and all applicable  
19 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary  
20 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’  
21 fees incurred by the employee enforcing the rights granted by this section.”

22 173. Among other things, under California law, when employees must use their personal  
23 cellphones for work-related purposes, the employer must reimburse them for a reasonable  
24 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228  
25 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was

26  
27 <sup>2</sup> Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty  
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,  
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 required to use their personal cellphone for work-related purposes and not reimbursed for the use.  
2 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile  
3 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear  
4 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

5 174. Further, “any contract or agreement, express or implied, made by any employee to  
6 waive the benefits of this article or any part thereof, is null and void, and this article shall not  
7 deprive any employee or his personal representative of any right or remedy to which he is entitled  
8 to under the laws of this State.” *See* Cal. Lab. Code section 2804.

9 175. As described above, Plaintiffs and the Aggrieved Employees were improperly  
10 required to pay for business expenses that are legally the responsibility of the employer.

11 176. Defendants’ failure to provide Plaintiffs and the Aggrieved Employees with full  
12 reimbursement for all reasonable expenses associated with carrying out their duties required that  
13 Plaintiffs and the Aggrieved Employees subsidize and/or carry the burden of business expenses in  
14 violation of Labor Code section 2802.

15 177. As a result of Defendants’ unlawful conduct, Plaintiffs and other Aggrieved  
16 Employees have suffered injury in that they were not completely reimbursed as mandated by  
17 California law.

18 178. Defendants’ failure to provide Plaintiffs and the Aggrieved Employees with full  
19 reimbursement for all reasonable expenses associated with carrying out their duties required that  
20 Plaintiffs and the Aggrieved Employees subsidize and/or carry the burden of business expenses in  
21 violation of Labor Code section 2802.

22 179. As a result of Defendants’ unlawful conduct, Plaintiffs and the Aggrieved Employees  
23 have suffered injury in that they were not completely reimbursed as mandated by California law.

24 180. Despite being aware of these business expenses, Defendants failed to reimburse  
25 Plaintiffs and other Aggrieved Employees for such expenses in violation of California Labor Code  
26 section 2802. In turn, there constitutes a PAGA violation based on violations of California Labor  
27 Code section 2802 and the applicable Wage Order, which subject Defendants to civil penalties  
28 under Labor Code sections 2699, et seq.

1                   **Wage Statement Violations**

2           181. California law requires every employer semi-monthly or at the time of each payment  
3 of wages to furnish its employees with an accurate itemized wage statement in writing that contains  
4 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of  
5 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;  
6 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee  
7 is paid; (7) the name of the employee and only the last four digits of his or her social security  
8 number or an employee identification number other than a social security number; (8) the name  
9 and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect  
10 during the pay period and the corresponding number of hours worked at each hourly rate. Lab.  
11 Code § 226.

12           182. As Defendants failed to provide Plaintiffs and other Aggrieved Employees with  
13 meal and rest periods that complied with Labor Code section 226.7, the wage statements  
14 Defendants issued to Plaintiffs and other Aggrieved Employees failed and continue to fail to  
15 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the  
16 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages  
17 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect  
18 during the pay period and the corresponding number of hours worked at each hourly rate by the  
19 employee, in violation of Labor Code section 226(a)(9).

20           183. Moreover, due to violations detailed above, including but not limited to,  
21 Defendants' failure to pay regular and overtime wages for all hours worked, failure to provide meal  
22 and rest break premiums, and failure to pay all sick leave wages at the proper rates, Defendants  
23 have violated California Labor Code § 226 by willfully failing to furnish Plaintiffs and other  
24 Aggrieved Employees with accurate, itemized wage statements that listed the gross and net wages  
25 earned and the correct applicable rates of pay for all hours worked. Based on information and belief,  
26 Defendants failed to incorporate all forms of non-discretionary compensation earned during the pay  
27 period into the regular rate of pay for purposes of calculating the owed overtime rate, and as such,  
28

1 failed to display the proper overtime rate(s) for each hour of overtime worked by Plaintiffs and  
2 other Aggrieved Employees.

3 184. As explained above, wage statements issued by Defendants failed to list the “total  
4 hours worked” by Plaintiffs and Aggrieved Employees (by virtue of rounded time entries, automatic  
5 deduction for meal periods/failure to relieve Aggrieved Employees of all duties and employer  
6 control during unpaid meal periods, and/or other off-the-clock work policies and practices  
7 described above), which results in a violation of Labor Code section 226(a).

8 185. Separately, and independent of the above allegations, based on information and  
9 belief, Defendants issued wage statements to Aggrieved Employees that failed to list the total hours  
10 worked, in violation of including but not limited to, Labor Code section (a)(2).

11 186. Failure to list all hours worked on a wage statement, gives rise to an inference of  
12 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th  
13 1308, 1337).

14 187. Based on information and belief, wage statements issued by Defendants failed to list  
15 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
16 worked at each hourly rate by the employee, in violation of, including but not limited to, Labor  
17 Code section 226(a)(9).

18 188. Separately, and independent from the above allegations, based on information and  
19 belief, Defendants issued wage statements to Plaintiffs and Aggrieved Employees that violate  
20 Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal entity  
21 that is the employer.

22 189. Based on information and belief, wage statements issued by Defendants failed to list  
23 the inclusive dates of the pay period for which the Class Member is being paid.

24 190. Defendants’ failure to accurately list all hours worked on all wage statements caused  
25 confusion to Plaintiffs and caused and continues to cause confusion to other Aggrieved Employees  
26 over whether they received all wages owed to them.

27 191. As a result, Plaintiffs and other Aggrieved Employees have suffered injury as they  
28

1 could not easily determine whether they received all wages owed to them and whether they were  
2 paid for all hours worked.

3 192. Moreover, as a result of Defendants' failure to list the correct name and/or address  
4 of the legal entity that is the employer, Plaintiffs and Aggrieved Employees have suffered injury as  
5 they could not contact their employer regarding any question(s) they had about wages paid.

6 193. Defendants' knowingly and intentionally failed to provide Plaintiffs and Aggrieved  
7 Employees with accurate, itemized wage statements.

8 194. As a result of Defendants' unlawful conduct, Plaintiffs and Aggrieved Employees  
9 have suffered injury. The absence of accurate information on their wage statements has prevented  
10 earlier challenges to Defendants' unlawful pay practices, will require discovery and mathematical  
11 computations to determine the amount of wages owed, and will cause difficulty and expense in  
12 attempting to reconstruct time and pay records. Defendants' conduct led to the submission of  
13 inaccurate information about wages and amounts deducted from wages to state and federal  
14 government agencies. As a result, Plaintiffs and Aggrieved Employees are required to participate  
15 in this lawsuit and create more difficulty and expense from having to reconstruct time and pay  
16 records than if DEFENDANTS had complied with its legal obligations.

17 195. These violations subject Defendants to civil penalties under Labor Code §§ 226,  
18 226.3, 1199, 2699, et seq., 2699.3, and 2699.5. Each violation results in a *separate* civil penalty,  
19 for each Aggrieved Employee, for each pay period during which the statute provisions were  
20 violated.<sup>3</sup>

21 **Unlawful Deductions**

22 196. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing]  
23 from an employee any part of wages theretofore paid by said employer to said employee." Labor  
24 Code section 222 prohibits the withholding of part of a wage and Labor Code section 223 prohibits  
25 the payment of less than a statutory or contractual wage scale. Further, California Labor Code  
26 section 224 only permits deductions from wages when the employer is required or empowered to  
27

28 <sup>3</sup> Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 do so by state or federal law or when the deduction if expressly authorized in writing by the  
2 employee for specified purposes that do not in effect reduce the agreed upon wage. Based on  
3 information and belief Defendants made unlawful deductions from Aggrieved Employees  
4 paychecks during the relevant period. Such a practice is in violation of including but not limited to,  
5 Labor Code sections 221-222 which subjects Defendants to civil penalties under Labor Code  
6 section 2699.

7 197. Each violation results in a separate civil penalty, for each Aggrieved Employee, for  
8 each pay period during which the statute provisions were violated. See Lab. Code § 225.5  
9 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty  
10 provided in this article, every person who unlawfully withholds wages due any employee in  
11 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure  
12 to pay each employee”).

13 **Reporting Time Pay Violations**

14 198. Section 5 of all applicable IWC Wage Orders, provides as follows:

15 (A) Each workday an employee is required to report for work and does report, but is not put  
16 to work or is furnished less than half said employee’s usual or scheduled day’s work, the  
17 employee shall be paid for half the usual or scheduled day’s work, but in no event for less  
18 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which  
19 shall not be less than the minimum wage. (B) If an employee is required to report for work  
20 a second time in any one workday and is furnished less than two (2) hours of work on the  
21 second reporting said employee shall be paid for two hours at the employee’s regular rate  
22 of pay, which shall not be less than the minimum wage.

23 199. Aggrieved Employees were not paid reporting time wages in accordance with  
24 California law, including but not limited to the applicable IWC Wage Order. For example, based  
25 on information and belief, at times, Aggrieved Employees reported to work for a scheduled shift  
26 but were sent home and/or were not put to work and were not paid all owed reporting time pay  
27 wages in accordance with California law.  
28

1           200. Based on information and belief, Defendants have a policy and practice of failing to  
2 pay all reporting time wages to Aggrieved Employees, in violation of California law, including but  
3 not limited to, the applicable IWC Wage Order, Section 5. Defendants' failure to pay all reporting  
4 time wages to Aggrieved Employees violated and continues to violate the applicable Wage Order,  
5 and the California Labor Code, including but not limited to section 1198.

6           **Violation of California Day of Rest Law**

7           201. Under California law, every employee in California is "entitled" to "one day's rest  
8 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days  
9 in seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation  
10 of the foregoing sections is a misdemeanor.

11           202. Based on information and belief, Defendants have and continues to have a uniform  
12 policy and practice of requiring Aggrieved Employees to work at least seven days consecutively in  
13 a workweek, in violation of including but not limited to, Labor Code Section 551. Based on  
14 information and belief, Plaintiffs and/or other Aggrieved Employees were suffered, permitted, or  
15 required to work at least seven (7) days consecutively in a workweek, in violation of California  
16 law, including but not limited to Labor Code Section 551.

17           **Seating Violations**

18           203. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be  
19 provided with suitable seats when the nature of the work reasonably permits the use of seats and  
20 when they are not actively engaged in the work duties that would not permit them to be seated.

21           204. All applicable IWC Wage Orders, Section 14(A-B) provides:

22                   (A) All working employees shall be provided with suitable seats when  
23 the nature of the work reasonably permits the use of seats.

24                   (B) When employees are not engaged in the active duties of their  
25 employment and the nature of the work requires standing, an adequate number of  
26 suitable seats shall be placed in reasonable proximity to the work area and  
27 employees shall be permitted to use such seats when it does not interfere with the  
28

1 performance of their duties.

2 205. Suitable seating is one of the worker protections covered by California's Wage  
3 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly  
4 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*  
5 *Restaurant Corp. v. Superior Court*, 53 Cal.4<sup>th</sup> 1004, 1027 (2012).

6 206. Based on information and belief, Defendants failed to provide Aggrieved  
7 Employees with suitable seating, and when such employees were not engaged in duties which  
8 required them to stand, no seating was placed in reasonable proximity to their workstations.

9 207. Moreover, based on information and belief, the nature of the work reasonably  
10 permitted the use of seats for at least part of the time that Aggrieved Employees were working.  
11 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties  
12 of their employment, yet there were no suitable seats in reasonable proximity to the work area and  
13 use of seats would not interfere with the performance of their duties.

14 208. The Aggrieved Employees worked in various positions. The nature of Aggrieved  
15 Employees' work reasonably permitted the use of seats. However, Defendants failed to provide  
16 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section  
17 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting  
18 Defendants to civil penalties under Labor Code sections 1199 and 2699, et seq.. Each violation of  
19 each Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in  
20 a separate civil penalty.

#### 21 **Sick Leave Violations**

22 209. Defendants violated California's paid sick leave laws including, Labor Code section  
23 245-248.5 and 233-234. Defendants either failed to provide sick leave pay to Plaintiffs and other  
24 Aggrieved Employees or failed to properly accrue paid sick leave due to Defendants' failure to  
25 account for actual hours worked (as explained above), and/or failure to incorporate multiple rates  
26 of pay and/or all forms of non-discretionary remuneration including but not limited to, non-  
27 discretionary bonuses, shift differential pay, and/or other non-discretionary compensation into the  
28 sick leave pay rate calculation.

1           210. Defendants further failed to give Plaintiffs and other Aggrieved Employees notice  
2 of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code  
3 section 2810.5 notice. In addition, Defendants failed to maintain accurate records of used sick leave  
4 and the balance of paid sick leave left to the employees, which affected Plaintiffs and Aggrieved  
5 Employees’ intelligent exercise of their paid sick leave.

6           211. But for this failure, Plaintiffs and other Aggrieved Employees would have used their  
7 paid sick leave at least prior to their respective separations, for as on several occasions thereafter,  
8 he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

9           212. In violation of Labor Code section 247.5, Defendants failed to maintain records  
10 documenting the hours worked and paid sick days accrued and used by Plaintiffs and all Aggrieved  
11 Employees, permitting the presumption that Plaintiffs and all Aggrieved Employees were entitled  
12 to the maximum number of hours accruable.

13           213. Upon information and belief, Defendants failed and continue to fail to comply with  
14 Labor Code section 246, by failing to provide Plaintiffs and all Aggrieved Employees with a Labor  
15 Code section 226 wage statement, or separate writing containing the amount of paid sick leave  
16 available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

17           214. These practices violated California’s sick leave laws, Labor Code section 245, *et*  
18 *seq.* On information and belief, Plaintiffs allege that all of these practices were experienced and  
19 continue to be experienced by other Aggrieved Employees.

20           215. Accordingly, Plaintiffs seek all appropriate relief under the PAGA, the  
21 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and  
22 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

23           **Failure To Provide Supplemental Paid Sick Leave**

24           216. Labor Code section 248.2 provides that all employers with 26 or more employees  
25 are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental  
26 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.  
27 Defendants violated Labor Code section 248.2 by not providing Plaintiffs and other Aggrieved  
28

1 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information  
2 and belief, Defendants failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor  
3 Code section 248.6.

4 **Failure to Pay Vested Vacation/Paid Time Off**

5 217. California Labor Code section 227.3 provides that when an employer policy  
6 provides for paid vacations and/or paid time off, and an employee is terminated without having  
7 taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as  
8 wages at the employee's final rate in accordance with such contract of employment or employer  
9 policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation  
10 time or paid time off upon termination.

11 218. Based on information and belief, Defendants had and continue to have a uniform  
12 policy and practice of failing to allow Aggrieved Employees to use their earned vacation/paid time  
13 off during their employment and failing to pay all vested, accrued paid time off to Aggrieved  
14 Employees upon separation of employment, in violation of California law, including but not limited  
15 to, Labor Code section 227.3.

16 **Untimely Payment of Wages During Employment**

17 219. California Labor Code section 204 provides that wages must be paid at least twice  
18 during each calendar month on days designated in advance by the employer as regular paydays,  
19 subject to some exceptions. Labor Code section 226 provides that wages earned between the 1<sup>st</sup>  
20 and 15<sup>th</sup> days, inclusive, of any calendar month must be paid between the 16<sup>th</sup> and the 26<sup>th</sup> day of  
21 that month and wages earned between the 16<sup>th</sup> and the last day, inclusive, of any calendar month  
22 must be paid between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month. Other payroll periods such as  
23 those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days  
24 following the close of the payroll period in which wages were earned.

25 220. Based on information and belief, Defendants failed to timely pay Plaintiffs and other  
26 Aggrieved Employees their earned wages in violation of Labor Code section 204, including an  
27 additional hour of pay for meal and rest periods not provided and/or otherwise by failing to  
28

1 compensate employees for all hours worked, and by failing to pay proper premium wage rates for  
2 all hours worked. Defendants' policies, practices, and/or procedures resulted in their failure to pay  
3 Plaintiffs and other Aggrieved Employees their earned wages within the applicable time frames  
4 outlined in Labor Code section 204. These violations subject Defendants to civil penalties under  
5 Labor Code section 210, 558, 2699, et seq., 2699.3, and 2699.5.

6 **Untimely Payment of Final Wages**

7 221. California Labor Code section 201(a) provides, in relevant part, that "[i]f an  
8 employer discharges an employee, the wages earned and unpaid at the time of discharge are due  
9 and payable immediately." California Labor Code section 202(a) provides, in relevant part, that  
10 "[i]f an employee not having a written contract for a definite period quits his or her employment,  
11 his or her wages shall become due and payable not later than 72 hours thereafter, unless the  
12 employee has given 72 hours previous notice of his or her intention to quit, in which case the  
13 employee is entitled to his or her wages at the time of quitting."

14 222. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages  
15 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty  
16 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.  
17 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code  
18 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4<sup>th</sup> 348 (2014); see  
19 also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4<sup>th</sup> 365 (2005).

20 223. Based on information and belief, Defendants failed and continue to fail to timely  
21 pay final wages to Plaintiffs and Aggrieved Employees upon separation of employment in violation  
22 of Labor Code section 201-202. Moreover, final paychecks once provided to Plaintiffs and  
23 Aggrieved Employees did not include all wages owed as they are devoid of, including but not  
24 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed  
25 sick leave and/or paid time off wages at the properly accrued rates.

26 224. As a result, Defendants violated Labor Code sections 201, 202, and 203. These  
27 violations subject Defendants to civil penalties under Labor Code sections 203, 210, 256, 558,  
28

1 2699, et seq., 2699.3, and 2699.5. Further, Defendants is subject to violation of Labor Code section  
2 1199.

3 **Violation of Labor Code Section 208**

4 225. Labor Code section 208 provides: Every employee who is discharged shall be paid  
5 at the place of discharge, and every employee who quits shall be paid at the office or agency of the  
6 employer in the county where the employee has been performing labor. All payments shall be made  
7 in the manner provided by law.

8 226. Based on information and belief, Defendants have a policy and practice of failing to  
9 provide Aggrieved Employees who are terminated with their final paychecks at the place of  
10 discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the office  
11 or agency of Defendants in the county where the work was performed, in violation of Labor Code  
12 section 208.

13 **Unlawful Withholding of Gratuities**

14 227. Labor Code section 351 prohibits employers from collecting, taking, or receiving  
15 any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct  
16 any amount from wages due an employee on account of a gratuity, or require an employee to credit  
17 the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee  
18 from the employer.

19 228. Based on information and belief, Defendants have a policy and/or practice of  
20 collecting, taking, or receiving gratuities, or part thereof, that are paid, given, to, or left for  
21 Aggrieved Employee by patrons.

22 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

23 229. Unlawful Agreements. Labor Code section 432.5 provides that “no employer...shall  
24 require any employee or applicant for employment to agree, in writing, to any term or condition  
25 which is known by such employer...to be prohibited by law.” Defendants required and continue to  
26 require Plaintiffs and Aggrieved Employees to agree in writing to unlawful conditions of  
27 employment including but not limited to unlawful non-solicitation/non-compete agreements,  
28

1 unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers,  
2 including but not limited to unlawful meal period waivers, unlawful forum selection clauses and/or  
3 choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a  
4 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

5         230. The California Labor Code places certain procedural and substantive limits on an  
6 employers' ability to conduct employee background checks and on how employers can use the  
7 information they obtain through those background checks. Labor Code section 1024.5 states that  
8 employers, except for financial institutions, may order a credit check only if the individual works  
9 (or is applying to work) in certain positions (e.g., managerial positions, financially-related  
10 positions, and certain government positions). Additionally, the Investigative Consumer Reporting  
11 Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act  
12 (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an  
13 employee background check, including but not limited to identifying an appropriate reason for the  
14 background check, a separate consent form with required disclosures and certain formatting  
15 requirements, additional forms such as a summary of rights, a way by which to request a copy of  
16 the report, as well as proper notice of adverse actions taken, among other statutory requirements.

17         231. Based on information and belief, Defendants ordered unlawful financial credit  
18 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to  
19 provide ongoing written consent to the unlawful credit checks as a condition of employment, in  
20 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

21         232. Based on information and belief, Defendants required Aggrieved Employees to  
22 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of  
23 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

24         233. Based on further information and belief, Defendants required Aggrieved Employees  
25 to agree in writing to provide Defendants with ongoing consent to conduct background checks  
26 throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other  
27 applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants  
28

1 and employees to agree to an unlawful provision as a condition of employment.

2 234. Based on further information and belief, Defendants knew that requiring Aggrieved  
3 Employees to agree to unlawful criminal and/or financial background checks as a condition of  
4 obtaining and/or holding employment was unlawful.

5 235. By requiring that Aggrieved Employees sign off on the illegal background and/or  
6 financial checks, Defendants violated Labor Code section 432.5.

7 Unlawful Inquires into Criminal History

8 236. Labor Code section 432.7 prohibits an employer from asking applicants about past  
9 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on  
10 information and belief, Defendants asked Aggrieved Employees about arrests not resulting in  
11 convictions on its employment application, in violation of California law.

12 237. Upon information and belief, Defendants, in violation of California law, including  
13 but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”),  
14 asked Aggrieved Employees about convictions prior to extending an offer of employment and/or  
15 otherwise impermissibly inquired into criminal history on its employment application in violation  
16 of California law.

17 238. By asking about arrests not resulting in convictions, Defendants violated Labor  
18 Code section 432.7. By asking about convictions at the application phase or prior to extending an  
19 employment offer, Defendants violated California’s Fair Chance Act, and thereby violated Labor  
20 Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to disclose  
21 arrests and/or convictions as a condition of employment.

22 Unlawful PAGA Waiver

23 239. Additionally, Defendants violated Labor Code section 432.5 by requiring Aggrieved  
24 Employees to agree in writing to other unlawful agreements, including but not limited to, an  
25 unlawful waiver of PAGA and/or representative actions as a condition of employment.

26 240. An action pursuant to PAGA “...is a representative action on behalf of the state”  
27 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements  
28

1 purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and  
2 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384  
3 ("We conclude that where, as here, an employment agreement compels the waiver of representative  
4 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

5 241. Moreover, the California Supreme Court has ruled that a court cannot compel  
6 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as  
7 an individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There  
8 is no individual component to a PAGA action because 'every PAGA action ... is a representative  
9 action on behalf of the state.'")

10 242. Upon information and belief, Defendants required Aggrieved Employees to agree  
11 in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring  
12 Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, Defendants required  
13 written agreement to an unlawful provision as a condition of employment which is a violation of  
14 labor code section 432.5.

15 **Failure to Provide a Safe and Healthful Workplace.**

16 243. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the  
17 California Occupational Safety and Health Act ("Cal OSHA"), employers must maintain a safe and  
18 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

19 (a) Every employer shall furnish employment and a place of employment that is safe  
20 and healthful for the employees therein. Labor Code section 6401 provides as  
21 follows: Every employer shall furnish and use safety devices and safeguards, and  
22 shall adopt and use practices, means, methods, operations, and processes which are  
23 reasonably adequate to render such employment and place of employment safe and  
24 healthful. Every employer shall do every other thing reasonably necessary to protect  
25 the life, safety, and health of employees.

26 244. Labor Code section 6401.7(a) provides that every employee shall establish,  
27 implement, and maintain an effective injury prevention program.  
28

1           245. Labor Code section 6402 prohibits the following: No employer shall require, or  
2 permit any employee to go or be in any employment or place of employment which is not safe and  
3 healthful.

4           246. Similarly, Labor Code section 6404 provides as follows: No employer shall occupy  
5 or maintain any place of employment that is not safe and healthful.

6           247. In addition to the above, Labor Code section 6403 requires that employees provide  
7 safety devices to its employees. Labor Code section 6403 states: No employer shall fail or neglect  
8 to do any of the following:

9           (a) To provide and use safety devices and safeguards reasonably adequate to render  
10 the employment and place of employment safe.

11           (b) To adopt and use methods and processes reasonably adequate to render the  
12 employment and place of employment safe.

13           (c) To do every other thing reasonably necessary to protect the life, safety, and health  
14 of employees.

15           248. Similarly, Labor Code section 6406(d) states the following: No person shall do any  
16 of the following ... (d) Fail or neglect to do every other thing reasonably necessary to protect the  
17 life, safety, and health of employees.

18           249. Finally, Labor Code section 6407 provides: Every employer and every employee  
19 shall comply with occupational safety and health standards, with Section 25910 of the Health and  
20 Safety Code, and with all rules, regulations, and orders pursuant to this division which are  
21 applicable to his own actions and conduct.

22           250. Moreover, Labor Code section 6409.6 sets forth the actions an employer (or  
23 representative of employer) must take within one business day of receiving notice of potential  
24 exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

25           251. At all relevant times, Defendants employed Plaintiffs and Aggrieved Employees  
26 subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times, Defendants had  
27 and have a policy and practice of failing to furnish and use safety devices and safeguards and of  
28

1 failing to adopt and use practices, means, methods, operations, and/or processes which are  
2 reasonably adequate to render such employment and place of employment safe and healthful,  
3 pursuant to, including but not limited to, Labor Code section 6401. At all relevant times Defendants  
4 had and have a policy and practice of failing to establish, implement, and/or maintain an effective  
5 injury prevention program, in violation of Labor Code section 6401.7. At all relevant times  
6 Defendants had and have a policy and practice of requiring or permitting employees to go or be in  
7 in any employment or place of employment which is not safe and healthful, pursuant to Labor Code  
8 section 6402. At all relevant times, Defendants had and have a policy and practice of failing or  
9 neglecting to: provide and use safety devices and safeguards reasonably adequate to render the  
10 employment and place of employment safe; adopt and use methods and processes reasonably  
11 adequate to render the employment and place of employment safe; and do every other thing  
12 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code  
13 section 6403.

14 252. Plaintiffs are informed and believe and thereon allege that these failures include,  
15 without limitation, failing to implement and/or effectively administer a proper injury and illness  
16 prevention program; failing to disinfect time clocks and other surfaces after use by Plaintiffs and/or  
17 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to  
18 Plaintiffs, other Aggrieved Employees; failing to provide adequate distance in working conditions  
19 between Plaintiffs and/or other Aggrieved Employees; failing to provide Plaintiffs and other  
20 Aggrieved Employees with adequate and readily accessible sanitation facilities, including but not  
21 limited to, washing facilities and/or toilet facilities and/or otherwise failing to comply with the  
22 sanitation standards as set forth in including but not limited to, Labor Code section 2350 and  
23 California Code of Regulations, Title 8, section 3364, 3365, and 3366.

24 253. Based on information and belief, Defendants had and have a policy and practice of  
25 failing to provide adequate and readily accessible sanitation facilities, and to the extent sanitation  
26 facilities were provided/made accessible at all to Plaintiffs and/or other Aggrieved Employees, a  
27 regular schedule for servicing, cleaning, and supplying for any sanitation facility to ensure it is  
28

1 maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing  
2 agents, water, single-use towels or blowers; and a sufficient number of toilets for use for each  
3 employee.

4 254. Based on further information and belief, to the extent sanitation facilities were  
5 provided/made accessible at all to Plaintiffs and/or other Aggrieved Employees, Defendants failed  
6 to maintain facilities that complied with California law, including without limitation, Labor Code  
7 Section 2350 and California Code of Regulations, title 8, sections 3203, 3364, 3365 and 3366.

8 255. At all relevant times, Defendants had a policy and practice of failing to give  
9 sufficient, adequate and proper notice to Plaintiffs and/or other Aggrieved Employees of the  
10 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace  
11 exposure from a qualifying individual as required by Labor Code section 6409.6. Plaintiffs are  
12 informed and believe that numerous employees contracted COVID-19 during the relevant time  
13 periods, but that Defendants failed to provide notice to employees. Based on further information  
14 and belief, Defendants do not or did not keep adequate records of written notifications required in  
15 subdivision (a) for a period of at least three years.

16 256. At all relevant times, Defendants had and have a policy and practice of failing within  
17 one business day after Defendants or a representative of Defendants received notice of potential  
18 exposure to COVID-19 to provide written notice to Plaintiffs, other Aggrieved Employees and/or  
19 their exclusive representatives, who were on the premises at the same worksite as a qualifying  
20 individual who was within the infectious period that they may have been exposed to COVID-19.  
21 Based on further information and belief, Defendants had and have a policy and practice of failing  
22 within one business day after Defendants or a representative of Defendants received a notice of  
23 potential exposure to COVID-19 to provide Plaintiffs and other Aggrieved Employees who were  
24 on the premises at the same worksite as the qualifying individual within the infectious period and  
25 the exclusive representative, if any, with information regarding COVID-19-related benefits to  
26 which the employee may be entitled under applicable federal, state or local laws, including but not  
27 limited to, workers' compensation, and options for exposed employees, including COVID-19-  
28

1 related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated  
2 leave provisions, as well as antiretaliation and antidiscrimination protections of the employee. As  
3 such, Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

4         257. At all relevant times, Defendants had and have a policy and practice of failing within  
5 one business day after Defendants or a representative of Defendants received a notice of potential  
6 exposure to COVID-19 to notify Plaintiffs and other Aggrieved Employees who were on the  
7 premises at the same worksite as the qualifying individual within the infectious period, and the  
8 employers of the subcontracted employees who were on the premises at the same worksite as the  
9 qualifying individual within the infectious period and the exclusive representative, if any, of the  
10 cleaning and disinfection plan that the employer is implementing per the guidelines of the federal  
11 Centers for Disease Control and Prevention and the COVID-19 prevention program per the CAL-  
12 OSHA COVID-19 Emergency Temporary Standards. As such, Defendants violated, without  
13 limitation, Labor Code sections 6409.6 and 6432.

14         258. At all relevant times, Defendants had and have a policy and practice of failing to  
15 notify the local public health agency in the jurisdiction of the worksite of the names, number,  
16 occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as  
17 defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed  
18 health care provider; a COVID-19 related order to isolate provided by a public health official; or  
19 died due to COVID-19, in the determination of a county public health department or per inclusion  
20 in the COVID-19 statistics of a county. As such, Defendants violated, without limitation, Labor  
21 Code sections 6409.6 and 6432.

22         259. Plaintiffs are informed and believes , and based thereon alleges that Defendants  
23 violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and 8397.4 by failing  
24 to provide adequate and readily accessible sanitation facilities; a regular schedule for servicing,  
25 cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and serviceable  
26 condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and  
27 a sufficient number of toilets to be used by each sex of employee.  
28

1           260. Plaintiffs are informed and believe and based thereon allege that Defendants  
2 violated the Labor Code sections described herein, including without limitation, for failure to:  
3 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to  
4 employees of COVID-19 exposures, to provide written notice to Plaintiffs and/or other Aggrieved  
5 Employees, who were on the premises at the same worksite as a qualifying individual who was  
6 within the infectious period that they may have been exposed to COVID-19 pursuant to California  
7 and local laws.

8           261. Based on information and belief, Defendants failed to protect Aggrieved Employees  
9 from exposure to COVID-19 due to, including but not limited to, failing to maintain/update  
10 Defendants' workplace safety plans and/or procedures to properly address hazards related to the  
11 COVID-19 virus.

12           262. As such, Defendants failed to comply with the occupational safety and health  
13 standards, failed to do everything reasonably necessary to protect the health and safety of  
14 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety  
15 devices necessary to maintain a safe and healthful workplace.

16           263. As a result of Defendants' acts and omissions, Defendants violated Labor Code  
17 section 6400-6404, 6406-6407, and 6409.6 as to Plaintiffs and Aggrieved Employees and is subject  
18 to civil penalties.

19           264. Under the provisions of PAGA and the above mentioned Labor Code sections,  
20 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,  
21 226.7, 226.8, 245-248.6, 256, 351, 432, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1174, 1174.5,  
22 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, et seq., 2699.3, 2802, 2810.5, 6400-6404 and 6406-  
23 6407, 6409.6, 6432, all applicable Wage Orders, and all applicable sections of the California Code  
24 of Regulations, as well as all interpretations of these laws by California Courts and administrative  
25 bodies, as well as any other law that is enforceable through PAGA, Defendants are liable for the  
26 following penalties:

27           a. All statutorily-specified penalties recoverable under PAGA as enumerated in the  
28

relevant California Labor Code provisions listed herein only if permitted by the  
PAGA statute, pursuant to Labor Code section 2699(a); and

- b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code section 2699(f).
- c. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against Plaintiffs or any Aggrieved Employee, whether a party to this action or not.

265. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, Plaintiffs is entitled to recover civil penalties, costs, and attorney's fees.

266. Under the provisions of PAGA and Labor Code sections listed above and all relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, Defendants is liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA penalties under Labor Code Section 2699(f) for any violation of a Labor Code section without a specified civil penalty.

267. Plaintiffs complied with the procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. Plaintiffs gave written notice to the California Labor and Workforce Development Agency ("LWDA") via electronic mail at [PAGAfilings@dir.ca.gov](mailto:PAGAfilings@dir.ca.gov) and to Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts and theories to support the alleged violations.

268. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties it intends to investigate the alleged violations within 65 days of the date(s) of each Plaintiffs' respective written PAGA notice. As of the expiration of the statutory exhaustion period(s), the LWDA has not provided the parties any notice of its intention to investigate Plaintiffs'

claims on behalf of the State of California and the Aggrieved Employees. As of the filing of this First Amended Complaint, Defendants have not responded to Plaintiffs' PAGA notice in an attempt to cure. Accordingly, Plaintiffs have exhausted all administrative remedies required by law.

269. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, Plaintiffs are entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all in an amount to be proved.

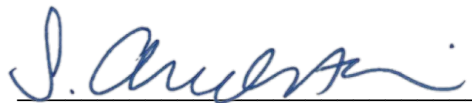
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief and judgment as follows on behalf of Plaintiffs, the State of California, and all Aggrieved Employees:

1. For civil penalties under Labor Code sections 558 and section 2699, et seq. (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining Defendants from engaging in similar unlawful conduct as set forth herein;
3. For reasonable attorney's fees and costs of suit; and
4. For such other and further relief that the Court deems just and proper.

Dated: August 8, 2024

**CROSNER LEGAL, P.C.**



Jamie Serb  
Sepideh Ardestani  
Zachary M. Crosner  
Attorneys for Plaintiffs

1 Dated: August 8, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP**

3 /s/ Ricardo R. Ehmman

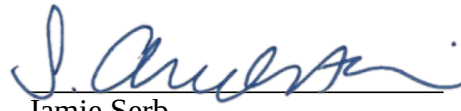
4 Norman B. Blumenthal  
5 Kyle R. Nordrehaug  
6 Aparajit Bhowmik  
7 Nicholas J. De Blouw

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs demand a trial by jury on all claims so triable.

10 Dated: August 8, 2024

**CROSNER LEGAL, P.C.**

11 

12 Jamie Serb  
13 Sepideh Ardestani  
14 Zachary M. Crosner

15 Attorneys for Plaintiffs  
16 WENDY SGONTZ, VICKY WRIGHT and  
17 NICOLE GREGORY

18 Dated: August 8, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP**

20 \_\_\_\_\_  
21 Norman B. Blumenthal  
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