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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**
11

12 JESUS RUIZ ESCUDERO, on behalf of
himself, the State of California, and others
13 similarly situated and aggrieved,

14 PLAINTIFF,
15

16 v.

17 MERCHANTS BUILDING
18 MAINTENANCE, LLC, a California
limited liability company; and DOES 1-
19 100, inclusive,

20 Defendants.
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Case No.: **21STCV47054**

CLASS ACTION COMPLAINT FOR:

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition *and***
9. **Violation of Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1 PLAINTIFF, JESUS RUIZ ESCUDERO (“PLAINTIFF”), on behalf of himself, the State of
2 California, and others similarly situated and aggrieved, hereby files this Complaint against
3 Defendant MERCHANTS BUILDING MAINTENANCE, LLC (“DEFENDANT”) and DOES 1-
4 100, inclusive. PLAINTIFF is informed and believes and thereon alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. This court possesses original subject matter jurisdiction over this matter. Venue is
7 proper in Los Angeles County, California, because DEFENDANT maintains its principal place of
8 business in Los Angeles County. Moreover, DEFENDANT conducts business within this judicial
9 district and some of the complained of conduct occurred in this judicial district. *See also Crestwood*
10 *Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is
11 proper in any county where the defendants committed Labor Code violations against some of its
12 employees).

13 **THE PARTIES**

14 2. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF
15 was employed by DEFENDANT in the State of California as a non-exempt employee during the
16 relevant time period.

17 3. Defendant MERCHANTS BUILDING MAINTENANCE, LLC is a California
18 limited liability company that, at all relevant times, was authorized to do business within the State
19 of California and is doing business in the State of California. DEFENDANT provides janitorial,
20 facility maintenance and related services to commercial establishments.

21 4. The true names and capacities of the DOE Defendants sued herein as DOES 1
22 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
23 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
24 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
25 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
26 become known.

27 5. PLAINTIFF is further informed and believes that, at all relevant times, each
28 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,

1 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
2 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
3 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
4 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
5 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
6 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
7 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
8 controlled, aided and abetted the conduct of all other Defendants.

9 **CLASS ALLEGATIONS**

10 6. PLAINTIFF brings this action on behalf of himself and all others similarly situated
11 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
12 represent are defined as follows and referred to as the “Class Members”: “All non-exempt workers
13 employed by DEFENDANT in California at any time within the four years prior to the filing of the
14 initial complaint.”

- 15 a. Numerosity. While the exact number of Class Members is unknown to
16 PLAINTIFF at this time, the class is so numerous that the individual joinder of
17 all members is impractical under the circumstances of this case.
- 18 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
19 because common questions of law and fact predominate over individual issues.
20 Common questions include, but are not limited to, the following: (1) whether
21 DEFENDANT understated hours worked and failed to pay all amounts due to
22 PLAINTIFF and the Class Members for wages earned, including minimum and
23 overtime wages, under California law; (2) whether DEFENDANT provided
24 PLAINTIFF and the Class Members with all meal periods or premium payments
25 in lieu thereof in compliance with California law; (3) whether DEFENDANT
26 provided PLAINTIFF and the Class Members with all rest periods or premium
27 payments in lieu thereof, in compliance with California law; (4) whether
28 DEFENDANT provided PLAINTIFF and the Class Members with accurate,

1 itemized wage statements in compliance with California law, displaying,
2 including but not limited to, the total hours worked during the pay period; (5)
3 whether DEFENDANT timely paid PLAINTIFF and the Class Members all
4 wages due upon separation of employment; (6) whether DEFENDANT failed
5 to reimburse PLAINTIFF and the Class Members for all business expenses; and
6 (7) whether DEFENDANT violated California Business and Professions Code
7 sections 17200, et seq.

8 c. Ascertainable Class. The proposed class is ascertainable as its members can be
9 identified and located using information in DEFENDANT's business, payroll
10 and personnel record.

11 d. Numerosity. The class is so numerous that the individual joinder of all Class
12 Members is impractical under the circumstances of this case. While the exact
13 number of Class Members is unknown to PLAINTIFF, PLAINTIFF is informed
14 and believes the class consists of at least 100 individuals.

15 e. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
16 PLAINTIFF suffered a similar injury as the other Class Members as a result of
17 DEFENDANT's common practices regarding, *inter-alia*, failure to calculate
18 and pay all owed minimum and overtime wages, failure to provide proper meal
19 and rest periods or premium compensation in lieu thereof, failure to provide
20 accurate wage statements, failure to reimburse business expenses, and failure to
21 pay all wages due upon separation of employment.

22 f. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
23 Class Members. PLAINTIFF has no interests adverse to the interests of the other
24 Class Members. Counsel who represent PLAINTIFF are competent and
25 experienced in litigating similar class action cases and are California lawyers in
26 good standing. Counsel for PLAINTIFF have the experience and resources to
27 vigorously prosecute this case.

28 g. Superiority. A class action is superior to other available means for the fair and

1 efficient adjudication of this controversy since individual joinder of all members
2 of the class is impractical. Class action treatment will permit a large number of
3 similarly situated persons to prosecute their common claims in a single forum
4 simultaneously, efficiently, and without the unnecessary duplication of effort
5 and expense that numerous individual actions would engender. Furthermore, as
6 the damages suffered by each individual member of the class may be relatively
7 small, the expenses and burden of individual litigation would make it difficult
8 or impossible for individual members of the class to redress the wrongs done to
9 them, while an important public interest will be served by addressing the matter
10 as a class action. The cost to the court system of adjudication of such
11 individualized litigation would be substantial. Individualized litigation would
12 also present the potential for inconsistent or contradictory judgments. Finally,
13 the alternative of filing a claim with the California Labor Commissioner is not
14 superior, given the lack of discovery in such proceedings, the fact that there are
15 fewer available remedies, and the losing party has the right to a trial de novo in
16 the Superior Court.

17 **FACTUAL AND LEGAL ALLEGATIONS**

18 7. During the four-year period preceding filing of this complaint, PLAINTIFF, and each
19 of the Class Members, were employed by DEFENDANT in the State of California as non-exempt,
20 employees. At all times referenced herein, DEFENDANT exercised control over PLAINTIFF and
21 each of the Class Members and suffered and/or permitted them to work.

22 8. PLAINTIFF was employed by DEFENDANT as a non-exempt, janitor, maintenance
23 worker and or similar title during the relevant time period, until the separation of his employment,
24 on or about August 15, 2021. PLAINTIFF worked for DEFENDANT performing janitorial and
25 disinfecting duties at the City Center on 6th shopping center in Los Angeles, California.

26 9. PLAINTIFF was typically scheduled to work shifts of at least eight (8) hours per
27 day, five (5) days per week.

28 10. DEFENDANT failed to compensate PLAINTIFF for all hours worked, resulting in

1 the underpayment of minimum and overtime wages owed to PLAINTIFF. Based on information
2 and belief, DEFENDANT implemented an auto-deduction policy and practice for meal periods and
3 time rounding policies and practices pertaining to shift start and end times and meal periods.
4 Specifically, PLAINTIFF alleges that DEFENDANT implemented a policy and practice of time
5 rounding that, as applied, systematically deprived PLAINTIFF of compensable time because the
6 time-rounding system implemented by DEFENDANT, more often than not, if not always, resulted
7 in understating actual compensable work time. Based on information and belief, DEFENDANT
8 adjusted PLAINTIFF's time entries and or PLAINTIFF's supervisor would record only the
9 scheduled beginning and end times of PLAINTIFF's shifts rather than the actual times PLAINTIFF
10 began and stopped working, resulting in PLAINTIFF consistently performing off-the-clock work.
11 DEFENDANT would also deduct at least thirty minutes per shift for a meal period, regardless of
12 whether PLAINTIFF received a thirty-minute off-duty meal period, resulting in significant off-the-
13 clock work and the underpayment of minimum and overtime wages owed to PLAINTIFF.

14 11. PLAINTIFF typically worked at least eight (8) hours per day each day he worked for
15 DEFENDANT during the relevant period. However, PLAINTIFF was consistently not provided a
16 thirty-minute, off-duty meal period before the end of the fifth hour of work due to having to attend
17 to work situations requiring immediate attention and/or pressure from supervisors to finish tasks
18 within time frames designated by DEFENDANT that prohibited the taking of timely, off-duty,
19 uninterrupted, thirty-minute meal periods. Per DEFENDANT's unlawful meal period policies and
20 practices, PLAINTIFF was consistently suffered or permitted to take meal periods past the fifth hour
21 of work, and his meal periods were consistently cut short/interrupted due to communications from
22 management on his company walkie talkie/radio instructing him to immediately attend to a
23 maintenance situation. DEFENDANT implemented policies and practices that failed to relieve
24 PLAINTIFF of all duties and employer control during meal periods. For example, DEFENDANT
25 prohibited PLAINTIFF from leaving the worksite/his immediate work area during his shifts,
26 including during any meal periods. DEFENDANT required PLAINTIFF to always monitor his
27 company walkie talkie/radio for communications from management so that PLAINTIFF could
28 respond to any work situations that arose, including during unpaid meal periods. Thus, PLAINTIFF

1 always remained under DEFENDANT's control during any purported meal periods. DEFENDANT
2 failed to compensate PLAINTIFF for this time spent on duty and under DEFENDANT's control
3 while clocked out for unpaid meal breaks. Regardless of whether a thirty-minute, off-duty meal
4 period was provided, DEFENDANT deducted for a meal period each workday, resulting in off-the-
5 clock work and the underpayment of minimum and overtime wages owed to PLAINTIFF.

6 12. Based on information and belief, DEFENDANT rounded the start and end times of
7 employee meal periods and start and end time of employee shifts resulting in PLAINTIFF not being
8 paid for all time worked. PLAINTIFF is further informed and believes and thereon alleges that
9 DEFENDANT had actual or constructive knowledge that its time-rounding and auto-deduction
10 policies and practices resulted in the denial of lawful meal periods to PLAINTIFF and the
11 underpayment of wages owed PLAINTIFF, in violation of California's minimum wage and meal
12 period laws. DEFENDANT never paid PLAINTIFF an additional hour of wages at his regular rate
13 of pay for each workday PLAINTIFF was denied a compliant meal period.

14 13. DEFENDANT did not authorize or permit PLAINTIFF to take rest periods.
15 DEFENDANT did not advise PLAINTIFF when rest periods should be taken, how long rest periods
16 should be, how many rest periods he should receive in a given shift, nor that rest periods should be
17 free of all duties and employer control.

18 14. PLAINTIFF did not receive compliant, timely, net ten-minute rest periods every four
19 (4) hours worked or major fraction thereof. Any purported rest periods would be interrupted, cut
20 short, on duty, and or late due to PLAINTIFF's workload and commentary from management
21 pressuring PLAINTIFF to skip breaks completely/take non-compliant breaks. PLAINTIFF was
22 pressured to complete tasks according to a designated schedule such that rest periods were only
23 taken once tasks/assignments were completed as time permitted. DEFENDANT implemented
24 policies and practices that failed to relieve PLAINTIFF of all duties and employer control during
25 any rest periods. As with any meal periods, DEFENDANT required PLAINTIFF to always remain
26 tethered to the worksite/immediate work area and monitor his company walkie talkie/radio for
27 communications from management during any rest periods. DEFENDANT had no policy in place
28 nor instruction as to the taking or timing of rest periods. DEFENDANT never paid PLAINTIFF an

1 additional hour of wages at his regular rate of pay for each workday DEFENDANT denied
2 PLAINTIFF a compliant rest period.

3 15. DEFENDANT failed to provide PLAINTIFF with accurate wage statements that
4 complied with Labor Code section 226. Wage statements provided by DEFENDANT do not
5 accurately reflect, inter-alia, the total hours worked for the pay period. Wage statements provided
6 by DEFENDANT fail to indicate the "total hours worked" by PLAINTIFF by virtue of
7 DEFENDANT's time-rounding practices, payment according to scheduled hours worked rather than
8 actual hours worked and failure to relieve employees of all duties and employer control during
9 unpaid meal periods, as described herein. As a result, the wage statements provided to PLAINTIFF
10 were not accurate and do not include all of the statutorily required information, such as, but not
11 limited to, the total hours worked. Accordingly, DEFENDANT violated Labor Code section 226.

12 16. DEFENDANT required PLAINTIFF to incur business expenses as a direct
13 consequence of the performance of his job duties without providing reimbursement, in violation of
14 Labor Code section 2802. PLAINTIFF was required to incur without any reimbursement from
15 DEFENDANT data plan charges in connection with DEFENDANT requiring PLAINTIFF to
16 regularly use his personal cellphone/other personal mobile communication device to communicate
17 with his supervisors regarding scheduling/work tasks. DEFENDANT also required PLAINTIFF to
18 purchase his own tools for work, such as, but not limited to, cleaning and or disinfectant supplies as
19 well as personal protective equipment, such as, but not limited to, gloves, masks and rubber shoes,
20 without reimbursing PLAINTIFF for these expenses PLAINTIFF incurred as a direct consequence
21 of the discharge of his job duties.

22 17. PLAINTIFF was improperly required to pay for business expenses that are supposed
23 to be the responsibility of the employer, as described above. DEFENDANT did not offer/provide
24 any reimbursement for these business-related expenses or any amount offered/provided fell far
25 below what PLAINTIFF was required to pay out of pocket/the actual expenses PLAINTIFF
26 incurred. DEFENDANT's failure to provide PLAINTIFF with full reimbursement for all
27 reasonable expenses associated with carrying out his duties required PLAINTIFF to subsidize
28 and/or carry the burden of business expenses in violation of Labor Code section 2802.

18. During the relevant time period, DEFENDANT failed to properly record and pay PLAINTIFF all owed sick time benefits. DEFENDANT failed to pay PLAINTIFF sick leave benefits at the properly accrued rates due to, including but not limited to, DEFENDANT's failure to base the accrued sick leave on the correct number of hours worked as a result of DEFENDANT's time-rounding policies and practices, payment according to scheduled hours worked rather than actual time worked, and failure to relieve employees of all duties and employer control during unpaid meal periods, as described herein.

19. Upon separation of employment, DEFENDANT failed to timely furnish PLAINTIFF his final paycheck containing all earned and unpaid wages, including but not limited to, all earned and unpaid minimum wages, all earned and unpaid overtime wages, all earned and unpaid vacation pay, and any and all accrued paid time off.

20. PLAINTIFF is informed and believes and allege thereon that DEFENDANT engaged in these same herein described unlawful practices with regard to all of the Class Members and the Aggrieved Employees (defined below), and that DEFENDANT applied these same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

FIRST CAUSE OF ACTION

**Recovery of Unpaid Minimum Wages and Liquidated Damages
(Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100,
inclusive)**

21. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

22. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to forty per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

23. DEFENDANT violated California's minimum wage laws by failing to compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other things, DEFENDANT's auto-deduction policy and practice for on-duty/shortened meal periods, payment of wages based on scheduled hours and not actual hours worked, and rounded time entries.

24. DEFENDANT had and continues to have a continuous policy of failing to pay PLAINTIFF and Class Members for all hours worked.

25. DEFENDANT had and continue to have a continuous policy of clocking out PLAINTIFF and Class Members/requiring PLAINTIFF and Class Members to clock out for at least thirty minutes per shift for a meal period even though PLAINTIFF and Class Members were not relieved of all duties and employer control during said meal periods, rendering the unpaid time compensable under California law.

26. DEFENDANT had and continues to have a continuous policy of rounding the Class Members time punches, including meal period time punches. On information and belief, this policy favored DEFENDANT more often than not, resulting in significant uncompensated time worked by the Class Members.

27. DEFENDANT had and continue to have a continuous policy of paying PLAINTIFF and Class Members for scheduled work hours, rather than actual time worked.

28. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus attorney's fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION
Recovery of Unpaid Overtime Wages
(Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100,
inclusive)

29. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

30. Employees in California must be paid overtime, equal to one and one-half times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of work in a workweek, and they must be paid double the regular rate of pay for all hours worked in excess of twelve hours in any workday and for all hours worked in excess of eight (8) on the seventh consecutive day of work in a workweek, unless they are exempt.

31. DEFENDANT failed to pay PLAINTIFF and the Class Members proper overtime

1 rates for all overtime worked due to, including but not limited to, DEFENDANT's failure to account
2 and compensate PLAINTIFF and the Class Members for all hours worked. PLAINTIFF and the
3 Class Members worked hours for which they were not compensated by DEFENDANT by virtue of
4 DEFENDANT's uniform policy and practice of failing to relieve PLAINTIFF and the Class
5 Members of all duties during unpaid meal periods, DEFENDANT's payment of wages according to
6 scheduled hours rather than actual time work and time-rounding/time-shaving policies and practices
7 described above. DEFENDANT's failure to pay for all time worked resulted in the underpayment
8 of overtime wages for PLAINTIFF and the Class Members who worked more than eight (8) hours
9 in a day, more than forty hours in a week and or more than seven (7) consecutive days in a
10 workweek.

11 32. DEFENDANT's conduct described above is in violation of California Labor Code
12 sections 510 and 1194 and all applicable Industrial Wage Commission Wage Orders.

13 33. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
14 wages, plus attorney's fees and costs, in an amount to be proved.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Provide Meal Periods or Compensation in Lieu Thereof (Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100, 17 inclusive)**

18 34. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

19 35. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
20 DEFENDANT was required to provide PLAINTIFF and the Class Members with one thirty-minute
21 meal period free from all duties and employer control for all shifts longer than five (5) hours, and a
22 second thirty-minute meal period free from all duties for all shifts longer than ten hours. Meal
23 periods can be waived, but only under the following circumstances: (1) if an employee's total work
24 period in a day is over five (5) hours but no more than six (6) hours, the required meal period may
25 be waived by mutual consent of the employer and employee, and (2) if an employee's total work
26 period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal
27 period may be waived by mutual consent of the employer and employee, but only if the first meal
28 period was not waived. Employers covered by the Wage Orders have an obligation to both (1)

1 relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to
2 record having done so. If the employer fails to properly record a valid meal period, it is presumed
3 no meal period was provided.

4 36. PLAINTIFF and the Class Members were consistently unable to take timely, off
5 duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods and/or
6 work through part or all of their meal periods due to the nature and constraints of their job duties
7 and or commentary from DEFENDANT pressuring them to take non-compliant breaks or skip
8 breaks completely.

9 37. DEFENDANT had and continues to have a continuous policy of clocking out
10 PLAINTIFF and Class Members/requiring PLAINTIFF and the Class Members clock out for at
11 least thirty minutes for a meal period, even though PLAINTIFF and Class Members were not
12 relieved of all duties and employer control during said meal periods, rendering the unpaid time
13 compensable under California law. For example, PLAINTIFF and the Class Members were required
14 to remain on the worksite premises and carry and monitor work communication devices at all times
15 during their shifts, including during any purported meal periods.

16 38. Based on information and belief, DEFENDANT rounded the start and end times of
17 employee meal periods resulting in PLAINTIFF and the Class Members receiving late or shortened
18 meal periods. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

19 39. PLAINTIFF is further informed and believes and thereon alleges that DEFENDANT
20 had actual or constructive knowledge that its time-rounding and auto-deduction policies and
21 practices resulted in the denial of meal periods to PLAINTIFF, in violation of California's meal
22 period laws.

23 40. DEFENDANT did not pay PLAINTIFF and the Class Members an additional hour
24 of wages at their regular rate(s) of pay for each workday a compliant meal period was not provided.

25 41. DEFENDANT failed to provide PLAINTIFF and the Class Members with all
26 required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code
27 section 226.7, PLAINTIFF and the Class Members are entitled to one additional hour's pay at the
28

1 proper premium pay rate for each day a meal period was missed/on duty, late or interrupted, all in
2 an amount to be proved at trial.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5 **(Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100,**
6 **inclusive)**

7 42. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 43. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
9 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
10 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
11 “insofar as practicable.” The rest period requirement obligates employers to permit and authorize
12 employees to take off-duty rest periods, meaning employers must relieve employees of all duties
13 and relinquish control over how employees spend their time. *Augustus v. ABM Security Services,*
14 *Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the employer
15 must pay the employee one hour of pay at the employee’s regular rate of compensation for each
16 workday the employer did not provide at least one legally required rest period, pursuant to Labor
17 Code section 226.7.

18 44. PLAINTIFF and the Class Members did not receive compliant, timely net ten-minute
19 rest periods every four (4) hours worked or major fraction thereof. Any purported rest periods would
20 be interrupted, cut short, on duty, and or late due to the nature and constraints of their job duties and
21 or commentary from DEFENDANT pressuring them to skip breaks completely/take non-compliant
22 breaks. PLAINTIFF and the Class Members were pressured to complete their work tasks according
23 to a schedule designated by DEFENDANT that prohibited the taking of compliant rest periods; rest
24 periods were only taken once jobs were completed/as time permitted.

25 45. DEFENDANT implemented policies and practices that failed to relieve PLAINTIFF
26 and the Class Members of all duties and employer control during rest periods. For example,
27 DEFENDANT had a uniform policy and practice of requiring PLAINTIFF and the Class Members
28 to always remain tethered to the worksite/their immediate work areas and to always carry and
monitor a work communication device during their shifts, including during any rest periods, in

1 violation of California law. See, e.g., *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
2 257. DEFENDANT had no policy in place nor instruction as to the taking or timing of rest periods.
3 PLAINTIFF and the Class Members were never paid a rest period premium for any missed or
4 improper rest period.

5 46. DEFENDANT is therefore liable to PLAINTIFF and the Class Members for one
6 hour of additional pay at the regular rate of compensation for each workday that a require rest
7 periods was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
8 Order, plus pre-judgment interest.

9 **FIFTH CAUSE OF ACTION**

10 **Failure to Furnish Accurate Itemized Wage Statements**
11 **(Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100,**
12 **inclusive)**

13 47. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 48. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
15 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
16 wage statement accurately stating the following:

17 (1) gross wages earned, (2) total hours worked by the employee,
18 except for any employee whose compensation is solely based on a
19 salary and who is exempt from payment of overtime under
20 subdivision (a) of Section 515 or any applicable order of the Industrial
21 Welfare Commission, (3) the number of piece-rate units earned and
22 any applicable piece rate if the employee is paid on a piece-rate basis,
23 (4) all deductions, provided that all deductions made on written orders
24 of the employee may be aggregated and shown as one item, (5) net
25 wages earned, (6) the inclusive dates of the period for which the
26 employee is paid, (7) the name of the employee and his or her social
27 security number, except that by January 1, 2008, only the last four
28 digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

49. During the relevant period, DEFENDANT also failed to provide PLAINTIFF
and the Class Members with accurate wage statements that complied with Labor Code section 226.
Wage statements provided by DEFENDANT do not accurately reflect, *inter-alia*, the total hours
worked for the pay period. Wage statements provided by DEFENDANT failed to indicate the “total

1 hours worked” by the Class Members by virtue of DEFENDANT’s automatic deduction for on-
2 duty/shortened/interrupted meal periods and time-rounding practices and payment according to
3 scheduled hours instead of actual hours worked as described herein. As a result, the wage statements
4 provided to the Class Members were not accurate and do not include all of the statutorily required
5 information, such as, but not limited to, the total hours worked. Accordingly, DEFENDANT
6 violated Labor Code section 226.

7 50. DEFENDANT’s knowingly and intentionally failed to provide PLAINTIFF and the
8 Class Members with proper, itemized wage statements as any wage statements provided by
9 DEFENDANT do not accurately reflect, *inter-alia*, the total hours worked per pay period.

10 51. As a result of DEFENDANT’s unlawful conduct, PLAINTIFF and the Class
11 Members have suffered injury. The absence of accurate information on their wage statements has
12 prevented earlier challenges to DEFENDANT’s unlawful pay practices, will require discovery and
13 mathematical computations to determine the amount of wages owed, and will cause difficulty and
14 expense in attempting to reconstruct time and pay records. DEFENDANT’s conduct led to the
15 submission of inaccurate information about wages and amounts deducted from wages to state and
16 federal government agencies. As a result, PLAINTIFF and the Class Members are required to
17 participate in this lawsuit and create more difficulty and expense for PLAINTIFF and the Class
18 Members from having to reconstruct time and pay records than if DEFENDANT had complied with
19 its legal obligations.

20 52. Pursuant to California Labor Code section 226(e), PLAINTIFF and the Class
21 Members are entitled to recover fifty dollars per employee for the initial pay period in which a
22 Section 226 violation occurred and one hundred dollars per employee per violation for each
23 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

24 53. Pursuant to California Labor Code section 226(h), PLAINTIFF and the Class
25 Members are entitled to bring an action for injunctive relief to ensure DEFENDANT’s compliance
26 with California Labor Code section 226(a). Injunctive relief is warranted because DEFENDANT
27 continues to provide currently employed Class Members with inaccurate wage statements or no
28 wage statements at all in violation of California Labor Code section 226(a). Currently employed

1 Class Members have no adequate legal remedy for the continuing injuries that will be suffered as a
2 result of DEFENDANT's ongoing unlawful conduct. Injunctive relief is the only remedy available
3 for ensuring DEFENDANT's compliance with California Labor Code section 226(a).

4 54. Pursuant to California Labor Code sections 226(e) and 226(h), PLAINTIFF and the
5 Class Members are entitled to recover the full amount of penalties due under Section 226(e),
6 reasonable attorneys' fees, and costs of suit.

7 **SIXTH CAUSE OF ACTION**

8 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
9 **(Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100,**
10 **inclusive)**

11 55. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.
12 California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges
13 an employee, the wages earned and unpaid at the time of discharge are due and payable
14 immediately."

15 56. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
16 employee not having a written contract for a definite period quits his or her employment, his or her
17 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
18 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
19 to his or her wages at the time of quitting."

20 57. DEFENDANT failed to timely pay PLAINTIFF and the Class Members all wages
21 that were due and owing upon termination or resignation, as described herein. Upon separation of
22 employment, DEFENDANT failed to timely furnish PLAINTIFF and the Class Members with their
23 final paychecks containing all earned and unpaid minimum wages, overtime wages, vacation pay,
24 and all paid time off at the properly accrued rates. Based on information and belief, the final
25 paychecks were not provided upon separation of employment within the time limits prescribed by
26 California law and any final paychecks provided were devoid of all earned and unpaid wages,
27 including but not limited to, all earned and unpaid minimum wages, overtime wages, vacation pay,
28 and all accrued paid time off at the properly accrued rates.

58. DEFENDANT willfully failed to timely pay all wages upon separation of

1 employment because DEFENDANT failed to pay sick leave at the properly accrued rates.

2 59. Under Labor Code section 203, PLAINTIFF and the Class Members who no longer
3 are employed with DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
4 pay, plus attorney's fees and costs, in an amount to be proved at trial.

5 **SEVENTH CAUSE OF ACTION**
6 **Failure to Reimburse Business Expenses**
7 **(Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100,**
8 **Inclusive)**

9 60. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 61. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
11 were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by
12 their employer and/or carrying out the duties assigned by their employers.

13 62. Among other things, under California law, when employees must use their personal
14 cellphones for work-related purposes, the employer must reimburse them for a reasonable
15 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
16 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
17 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
18 Id. 1144-1145.

19 63. PLAINTIFF and the Class Members were improperly required to pay for business
20 expenses that are legally the responsibility of the employer, including but not limited to, data plan
21 charges/other expenses incurred due to being required to use their personal cellphones/other
22 personal mobile communication devices to perform their job duties, such as but not limited to, for
23 communicating with management about work scheduling/tasks. DEFENDANT also required
24 PLAINTIFF and the Class Members to purchase their own tools, such as, but not limited to, cleaning
25 and or disinfectant supplies as well as personal protective equipment, such as, but not limited to,
26 gloves, masks and rubber shoes, without reimbursing PLAINTIFF and the Class Members for these
27 expenses they incurred as a direct consequence of the discharge of their job duties.

28 64. DEFENDANT failed to provide any reimbursement at all or any amount offered as

1 reimbursement fell far below the amount paid out of pocket/expenses incurred by PLAINTIFF and
2 the Class Members.

3 65. DEFENDANT's failure to provide PLAINTIFF and the Class Members with full
4 reimbursement for all reasonable expenses associated with carrying out their duties required that
5 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
6 violation of Labor Code section 2802.

7 66. As a result of DEFENDANT's unlawful conduct, PLAINTIFF and the Class
8 Members have suffered injury in that they were not completely reimbursed as mandated by
9 California law.

10 67. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
11 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
12 attorneys' fees, and costs of suit.

13 **EIGHTH CAUSE OF ACTION**

14 **Unfair Competition**

15 **(Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100,**
16 **Inclusive)**

17 68. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

18 69. The unlawful conduct of DEFENDANT alleged herein constitutes unfair
19 competition within the meaning of California Business and Professions Code section 17200. This
20 unfair conduct includes all unlawful conduct alleged herein, including but not limited to:
21 DEFENDANT's failure to pay minimum and overtime wages by virtue of its illegal policies and
22 practices; DEFENDANT's failure to authorize or permit, or provide, all required meal and rest
23 periods or pay proper premiums in lieu thereof; DEFENDANT's failure to furnish complete and
24 accurate itemized wage statements; DEFENDANT's failure to provide paid sick leave at the
25 properly accrued rates; DEFENDANT's failure to reimburse business expenses; and
26 DEFENDANT's failure to timely pay all wages due during and upon separation of employment.

27 70. Due to DEFENDANT's unfair and unlawful business practices in violation of the
28 California Labor Code, DEFENDANT has gained a competitive advantage over other comparable
companies doing business in the State of California that comply with their obligations to authorize

1 or permit rest and meal periods or pay proper meal and rest period premiums in lieu thereof, to
2 provide proper notice and properly accrue and pay sick time benefits, to provide complete and
3 accurate itemized wage statements, to reimburse employees for all business expenses, to pay all
4 owed minimum and overtime wages, and to pay all wages due during and upon separation of
5 employment of their employees.

6 71. As a result of DEFENDANT's unfair competition as alleged herein, PLAINTIFF
7 and the Class Members have suffered injury in fact and lost money or property, as described in more
8 detail above. Pursuant to California Business and Professions Code section 17200, et seq.,
9 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
10 belonging to them that DEFENDANT failed to pay and wrongfully retained by means of its unlawful
11 and unfair business practices.

12 72. PLAINTIFF also seeks an injunction against DEFENDANT on behalf of the Class
13 Members, enjoining DEFENDANT and any and all persons acting in concert with it from engaging
14 in each of the unlawful practices and policies set forth herein.

15 **NINTH CAUSE OF ACTION**
16 **Violation of the Private Attorneys General Act of 2004**
17 **(Against Defendant MERCHANTS BUILDING MAINTENANCE, LLC and DOES 1-100,**
18 **Inclusive)**

19 73. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

20 74. PLAINTIFF brings this cause of action under the Private Attorneys General Act of
21 2004, Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State
22 of California and Aggrieved Employees (defined below), regarding violations of the Labor Code as
23 to all similarly aggrieved individuals employed by DEFENDANT in the State of California as a
24 non-exempt employee. This cause of action is brought solely pursuant to PAGA and seeks no relief
25 beyond that available under PAGA.

26 75. Under Labor Code section 2699.3, the Labor and Workforce Development Agency
27 ("LWDA") must give written notice by certified mail to the parties that it intends to investigate the
28 alleged violations within 65 days of the date of PLAINTIFF's written notice. PLAINTIFF has
complied with the administrative exhaustion procedures for bringing suit specified in Labor Code

1 sections 2699.3 and 2699.5. PLAINTIFF gave timely written notice by certified mail to
2 DEFENDANT of the violation of various provisions of the California Labor Code as alleged in this
3 complaint and filed notice of the violations online with the LWDA. On October 20, 2021,
4 PLAINTIFF filed PLAINTIFF's notice with the LWDA ("PAGA Notice") and sent DEFENDANT
5 the PAGA Notice via certified mail. The LWDA assigned PLAINTIFF the following case number:
6 LWDA-CM-849296-21. Attached hereto as **Exhibit 1** is a true and correct copy of PLAINTIFF's
7 PAGA Notice.

8 76. The LWDA did not provide notice of its intention to investigate PLAINTIFF's claims
9 on behalf of the State of California and the Aggrieved Employees after expiration of the 65-day
10 waiting time period, or at any time. To the extent any of the alleged violations were curable,
11 DEFENDANT failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF has
12 exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,
13 PLAINTIFF's right to file the instant lawsuit has duly accrued.

14 77. PLAINTIFF is an "aggrieved employee" as that term is defined under the Labor Code
15 section 2699(c), as PLAINTIFF was employed by DEFENDANT during the applicable statutory
16 limitations period and suffered one or more of the Labor Code violations set forth herein.
17 Accordingly, PLAINTIFF seeks to recover on behalf of himself, the State of California, and all
18 Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorneys' fees and
19 costs.

20 78. PLAINTIFF has standing to bring a PAGA action on behalf of the defined
21 Aggrieved Employees, as he was employed by DEFENDANT and affected by one or more of
22 the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
23 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
24 the employer – regardless of whether PLAINTIFF experienced all violations personally. *Id.* at 760-
25 761.

26 79. PLAINTIFF brings this action on behalf of PLAINTIFF and all similarly aggrieved
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28

1 employees. The “Aggrieved Employees” shall be defined as follows: “all non-exempt workers
2 employed by DEFENDANT in California at any time from one year and sixty-five days prior to the
3 filing of the initial complaint through the present.”

4 80. From one year prior to PLAINTIFF’s filing of the required PAGA notice with the
5 LWDA, and continuing through the present, as alleged herein, DEFENDANT violated the California
6 Labor Code sections 201-202, 216, 221-223, 226, 226.7, 233-234, 245-248.5, 432.5, 432.7, 510,
7 512, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, and all relevant sections of the
8 applicable Wage Orders, as to PLAINTIFF and all Aggrieved Employees employed by
9 DEFENDANT as non-exempt employees. These violations subject DEFENDANT 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 sections 203, 210, 225.5, 226, 226.3, 256, 558, 558.1,
12 1174.5, 1197.1 and 2699.

13 81. **Unpaid Minimum and Overtime Wages.** At all times relevant to this Complaint,
14 Labor Code section 1194 was in full force and effect and required that DEFENDANT’s employees
15 in California be paid for all hours worked, up to forty per week or eight per day, at a regular time
16 rate no less than the mandated minimum wage.

17 82. Effective January 1, 2017, the California minimum wage rate for employers with 26
18 employees increased to \$10.50 per hour. On January 1, 2018, this rate was increased to \$11.00 per
19 hour. On January 1, 2019, this rate was increased to \$12.00 per hour. On January 1, 2020, this rate
20 was increased again to \$13.00 per hour. Finally, on January 1, 2021, this rate was increased again
21 to \$14.00 per hour and is scheduled to increase to \$15.00 per hour on January 1, 2022.

22 83. “Employer” means “any person who directly or indirectly, or through an agent or
23 any other person, employs or exercises control over the wages, hours, or working conditions of any
24 person.” Cal. Lab. Code section 1182.12(b)(3).

25 84. At all times relevant to this complaint, DEFENDANT was an employer who
26 employed 26 or more employees.

27 85. Pursuant to Cal. Labor Code section 510 and all applicable IWC Wage Orders,
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1 section 3, employees in California must be paid overtime, equal to one and a half (1.5) times the
2 employee's regular rate of pay, for all hours worked in excess of forty (40) per week or eight (8) per
3 workday and must be paid double the regular hourly rate of pay for each hour worked beyond twelve
4 (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
5 consecutive day of work in a work week, unless they are exempt.

6 86. PLAINTIFF and all Aggrieved Employees were non-exempt employees who
7 regularly worked time for which they were not compensated, resulting in unpaid minimum wages
8 as well as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)
9 hours per week or more than eight (8) hours in a workday. Aggrieved Employees who worked more
10 than twelve hours in a workday or more than eight (8) hours on the seventh consecutive day of work
11 in a workweek were also denied "double time" wages due to, including but not limited to,
12 DEFENDANT's failure to relieve Aggrieved Employees of all duties during unpaid meal periods,
13 rounded time entries and payment of wages according to scheduled hours worked rather than actual
14 time worked as described herein.

15 87. PLAINTIFF and other Aggrieved Employees were not paid for all hours worked
16 because of DEFENDANT's failure to relieve Aggrieved Employees of all duties during unpaid meal
17 periods, payment of wages based on scheduled hours and not actual hours worked, and rounded time
18 entries. DEFENDANT had and continue to have a continuous policy of clocking out Aggrieved
19 Employees for at least thirty minutes per shift, even though Aggrieved Employees were not relieved
20 of all duties and employer control during said meal periods, rendering the unpaid time compensable
21 under California law. DEFENDANT had and continue to have a continuous policy of rounding
22 Aggrieved Employees time punches, including shift start and end time punches and meal period
23 time punches. On information and belief, this policy favored DEFENDANT more often than not,
24 resulting in significant uncompensated time worked by Aggrieved Employees. DEFENDANT had
25 and continues to have a continuous policy of paying Aggrieved Employees for scheduled hours,
26 rather than the time actually reflected on Aggrieved Employees' time records/actual time worked.
27 This regular performance of off-the-clock work resulted in the underpayment of minimum wages
28 owed to Aggrieved Employees, the underpayment of overtime wages for those Aggrieved

1 Employees who worked more than eight (8) hours per workday or more than forty per week, the
2 underpayment of “double time” wages for those Aggrieved Employees who worked more than
3 twelve (12) hours per workday or more than eight (8) hours on the seventh consecutive day of work,
4 as well as record-keeping violations.

5 88. Based on information and belief, DEFENDANT further violated California’s
6 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
7 limited to, non-discretionary bonus compensation and or multiple regular rates of pay and or shift
8 differential pay, into the regular pay rate used to calculate the overtime rate of pay. Failing to include
9 non-discretionary compensation in the regular pay rate resulted in a miscalculation of the overtime
10 wage rate, resulting in the underpayment of overtime wages owed to Aggrieved Employees.

11 89. **Meal Breaks.** Under Labor Code sections 226.7, 512, and the applicable IWC Wage
12 Orders, DEFENDANT was required to provide PLAINTIFF and the Aggrieved Employees with
13 one thirty (30) minute meal break free from all duties for all shifts greater than five (5) but less than
14 ten (10) hours in length, and a second thirty (30) minute meal break free from all duties for all shifts
15 of ten (10) hours or more. The first meal period must be provided before the end of the fifth hour of
16 work and the second meal period before the end of the tenth hour of work. Employers covered by
17 the Wage Orders have an obligation to both (a) relieve their employees for at least one meal period
18 for shifts over five hours, and (b) to record having done so. If the employer fails to properly record
19 a compliant meal period, it is presumed no meal period was provided. PLAINTIFF and the
20 Aggrieved Employees were not provided timely, off-duty, uninterrupted thirty-minute meal periods.

21 90. PLAINTIFF and other Aggrieved Employees consistently worked shifts of five and
22 one half hours or more. PLAINTIFF would not receive a single legally compliant thirty (30) minute
23 first meal break. PLAINTIFF and Aggrieved Employees who worked shifts longer than ten hours
24 would not receive a legally compliant second meal break before the end of the tenth hour of work.
25 PLAINTIFF and similarly Aggrieved Employees were consistently unable to take timely, off duty,
26 thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted
27 meal periods, and/or work through part or all their meal periods due to the nature and constraints of
28 their job duties and or commentary from supervisors pressuring them to take non-compliant breaks

1 or skip breaks completely. DEFENDANT implemented a policy and practice of automatically
2 deducting at least thirty minutes per shift for these missed/improper meal periods, despite having
3 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
4 receive compliant meal periods. DEFENDANT further implemented policies and practices that
5 failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and employer control
6 during unpaid meal breaks. Based on further information and belief, DEFENDANT illegally
7 rounded the start and end times of employee meal periods resulting in PLAINTIFF and other
8 Aggrieved Employees not being paid for all time worked as well as late or shortened meal periods.
9 See *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58. Based on information and belief,
10 DEFENDANTS did not have a written meal break policy, nor did DEFENDANT have any sort of
11 compliant policy in practice. Liability for the aggrieved employees can be established by evidence
12 that an employer adopted a uniform corporate break policy that failed to give full effect to California
13 law and the applicable Wage Order requirements. The fact that employees may legally waive meal
14 breaks does not affect this result. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
15 1004. PLAINTIFF is further informed and believes and thereon alleges that DEFENDANT had
16 actual or constructive knowledge that its time-rounding and auto-deduction policies and practices
17 resulted in the denial of meal periods owed PLAINTIFF and other Aggrieved Employees, in
18 violation of California's meal period laws. Based on information and belief, DEFENDANT's time
19 and pay records for the Aggrieved Employees reveal late and/or missed first and second meal
20 periods with no meal period premiums paid during those pay periods. DEFENDANT never paid
21 PLAINTIFF and other Aggrieved Employees an additional hour of wages at their respective regular
22 rates of pay for each workday a proper meal period was not provided. DEFENDANT either failed
23 to pay a meal period premium at all for each day an owed meal period was missed or noncompliant
24 or DEFENDANT failed to pay the proper meal period premium for failure to incorporate all non-
25 discretionary compensation, including but not limited to, non-discretionary bonus pay, multiple
26 regular pay rates and or shift differential compensation, into the regular pay rate used to calculate
27 the owed meal period premium. Failure to incorporate all non-discretionary compensation earned
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1 during the pay period into the meal period premium calculation resulted in the miscalculation and
2 nonpayment of the owed meal period premium.

3 91. **Rest Breaks.** PLAINTIFF and other Aggrieved Employees did not receive
4 compliant net ten (10)-minute rest periods for every four (4) hours worked (or major fraction
5 thereof), as required by Labor Code 226.7 and the applicable IWC Wage Orders. PLAINTIFF and
6 other Aggrieved Employees regularly worked more than three-and-one-half (3½) hours without
7 being authorized or permitted to take a paid net ten (10) minute rest period. DEFENDANT required
8 PLAINTIFF and other Aggrieved Employees to continuously work without authorizing or providing
9 paid rest periods. Any purported rest periods were interrupted, cut short, on duty, and or late due to
10 the nature and constraints of the Aggrieved Employees' job duties and or commentary from
11 DEFENDANT pressuring the Aggrieved Employees to skip rest breaks completely/take non-
12 compliant rest breaks. PLAINTIFF and other Aggrieved Employees were unable to avail themselves
13 of their rest breaks for various reasons, including but not limited to, pressure to attend to a work task
14 immediately and/or complete their work duties according to a schedule designated by
15 DEFENDANT that prohibited the taking of compliant rest periods. Rest periods were only taken
16 once jobs were completed/as time permitted. DEFENDANT implemented policies and practices that
17 failed to relieve Aggrieved Employees of all duties and employer control during rest periods. Per
18 DEFENDANT's uniform policy and practice, DEFENDANT required Aggrieved Employees to
19 remain tethered to their worksites and work communication devices during any rest periods,
20 rendering any purported rest periods on duty or otherwise noncompliant with California law. See
21 *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. DEFENDANT did not have a
22 compliant rest period policy in place regarding the taking, proper timing, or duty-free nature of rest
23 periods. PLAINTIFF and other Aggrieved Employees were never paid a rest period premium at
24 their respective regular rates of pay for each day an owed rest period was not provided.

25 92. **Inaccurate Wage Statements.** California Labor Code section 226 and the applicable
26 IWC Wage Order provides that, at the time of each payment of wages, the employer must provide
27 each employee with an itemized statement showing, inter alia, gross wages earned, total hours
28 worked, all deductions taken, net wages earned, the inclusive dates for which the employee is being

1 paid, the employee's name and last four digits of their social security number, the name and address
2 of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay
3 period and all hours worked at each rate.

4 93. DEFENDANT knew or had reason to know PLAINTIFF and the Aggrieved
5 Employees were working during their meal breaks and otherwise working off-the-clock and not
6 being paid for all hours worked. DEFENDANT knowingly and intentionally failed to provide
7 PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the wage
8 statements provided by DEFENDANT do not accurately reflect, inter alia, the correct total hours
9 worked. Due to, including but not limited to, DEFENDANT's time-rounding policies and practices,
10 payment according to scheduled hours rather than actual hours worked, and unlawful practice for
11 shortened/on-duty meal periods, DEFENDANT's wage statements fail to reflect the true total hours
12 worked by PLAINTIFF and the Aggrieved Employees worked, as required under Labor Code
13 section 226. Accordingly, DEFENDANT has violated Labor Code section 226.

14 94. **Record Keeping.** California Labor Code sections 226 and 1174 require employers
15 to keep "accurate and complete" payroll records showing, among other things, the hours worked
16 daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly requires
17 employers to keep time records showing, inter alia, when the employees begin and end each work
18 period and reflecting the true start and end times during which all owed meal periods are provided
19 each day. At all relevant times, DEFENDANT has failed, and continues to fail, to keep the required
20 time records, as DEFENDANT has failed to record the true start and end times of PLAINTIFF's and
21 the Aggrieved Employees' workdays and failed to record employee meal periods as time worked.
22 DEFENDANT's failure to keep "accurate and complete" payroll records for PLAINTIFF and the
23 Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all applicable
24 IWC Wage Orders. These violations subject DEFENDANT to civil penalties under the Labor Code,
25 including without limitation sections 1174.5 and 2699. Each violation of each Labor Code section
26 and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

27 95. **Untimely Wages at Termination.** Labor Code section 201 requires employers to
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1 pay all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
2 Code section 202 extends those provisions to employees who resign. For all Aggrieved Employees
3 no longer employed by DEFENDANT, DEFENDANT has an ongoing failure to pay such aggrieved
4 employees all wages earned and unpaid at the time of discharge or resignation, due to
5 DEFENDANTS' failure to pay, inter alia, all owed minimum wages, overtime wages, vacation pay
6 and all paid time off at the properly accrued rates. These violations subject DEFENDANT to civil
7 penalties under the Labor Code, including without limitation Labor Code sections 203, 256 and
8 2699. Each violation results in a separate civil penalty, for each Aggrieved Employee for each pay
9 period during which the statutory provisions were violated.

10 96. **Refusal to Pay Wages Due.** Labor Code section 216 declares unlawful an
11 employer's refusal to pay wages due and payable and/or an employer's denial of the validity of any
12 claim to wages due. DEFENDANT has violated this section by, inter-alia, failing to pay PLAINTIFF
13 and the Aggrieved Employees for all hours worked at the proper wage rate and by failing to pay
14 PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for each meal or
15 rest period not provided/that was invalid. These violations subject DEFENDANT to civil penalties
16 under Labor Code section 225.5. Each violation results in a separate civil penalty, for each aggrieved
17 employee, for each pay period during which the statute provisions were violated.

18 97. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
19 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
20 wages. As described above, DEFENDANT willfully and systematically denied the Aggrieved
21 Employees minimum and overtime wage compensation for all hours worked which resulted in the
22 payment of less than statutorily required wages to them. DEFENDANT acted with the intent to
23 deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages,
24 to which they were entitled to under California law.

25 98. **Unreimbursed Business Expenses.** Based on information and belief,
26 DEFENDANT regularly failed to reimburse and indemnify Aggrieved Employees for business
27 expenses, including but not limited to, costs associated with being required to use their cell
28 phones/other mobile devices for work and costs associated with having to purchase their own tools,

1 such as, but not limited to, cleaning and or disinfectant supplies as well as personal protective
2 equipment, such as, but not limited to, gloves, masks and rubber shoes. Pursuant to Labor Code
3 section 2802, Aggrieved Employees were entitled to be reimbursed for all reasonable expenses
4 associated with carrying out their job duties. Aggrieved Employees were improperly required to pay
5 for business expenses that are supposed to be the responsibility of the employer, including but not
6 limited to, work tools such as cleaning and or disinfectant supplies and personal protective
7 equipment they were required to don to perform their job duties as well as cell phone/data plan
8 charges stemming from being required to use their personal cellphones/other mobile devices to
9 communicate with management or otherwise perform their job duties. Among other things, under
10 California law, when employees must use their personal cellphones for work-related purposes, the
11 employer must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v.*
12 *Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee
13 will only need to show that he or she was required to use their personal cellphone for work-related
14 purposes and not reimbursed for the use. Id. 1144-1145. PLAINTIFF and other Aggrieved
15 Employees were improperly required to use their personal cellphones to communicate and conduct
16 work-related activities, such as but not limited to, to send and receive text messages and or calls
17 from DEFENDANT regarding, e.g., scheduling. As a pattern and practice, DEFENDANT regularly
18 failed to reimburse and indemnify Aggrieved Employees for business expenses. Pursuant to
19 California Labor Code section 2802, Aggrieved Employees were entitled to be reimbursed for all
20 reasonable expenses associated with carrying out orders by their employer and/or carrying out the
21 duties assigned by their employer. DEFENDANT's failure to provide Aggrieved Employees with
22 full reimbursement for all reasonable expenses associated with carrying out their duties required
23 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation of
24 Labor Code section 2802.

25 99. **Background Check Violations/Unlawful Agreements:** In addition to the above
26 requirements, the California Labor Code places certain procedural and substantive limits on
27 employers' ability to conduct employee background checks and on how employers can use the
28 information they obtain through these background checks. Upon information and belief,

1 DEFENDANT required PLAINTIFF and the Aggrieved Employees to submit or agree to submit to
2 unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
3 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
4 and belief, DEFENDANT also required PLAINTIFF and the Aggrieved Employees to agree in
5 writing to unlawful background checks not in conformance with the requirements of the
6 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
7 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
8 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of
9 employment, in violation of Labor Code section 432.5. Based on information and belief,
10 DEFENDANT required PLAINTIFF and the Aggrieved Employees to agree in writing to a
11 background check which failed to abide by the requirements set forth in CA Civil Code section
12 1786, et seq. and 15 U.S.C. section 1681, et seq., by including but not limited to, failing to provide
13 a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information
14 (including but not limited to, information that is solely relevant to applicants from different states),
15 failing to provide a lawful purpose for the background check, failing to provide a summary of rights
16 under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request
17 a copy of the report, and failing to properly obtain authorization or consent to such a background
18 check, and thus was an unlawful background check. Upon information and belief, DEFENDANT,
19 in violation of California law, including but not limited to, Labor Code section 432.7 and California's
20 Fair Chance Act, asked about arrests not resulting in convictions on its employment application,
21 asked about convictions prior to extending an offer of employment to Aggrieved Employees and/or
22 otherwise impermissibly inquired into criminal history on its employment application in violation
23 of California law. By asking about arrests not resulting in convictions, DEFENDANT violated
24 Labor Code 432.7. By asking about convictions at the application phase or prior to extending an
25 employment offer, DEFENDANT violated California's Fair Chance Act, and thereby violated Labor
26 Code 432.5 by unlawfully requiring the Aggrieved Employees to agree in writing to disclose arrests
27 or convictions as a condition of employment. These violations subject DEFENDANTS to civil
28 penalties under the Labor Code, including without limitation Labor Code sections 432.5, 432.7 and

1 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
2 employee, results in a separate civil penalty.

3 100. **Sick Leave Violations:** DEFENDANT violated California's paid sick leave laws
4 including, Labor Code sections 245-248.5; DEFENDANT failed to provide proper sick leave to
5 Aggrieved Employees, due to, including but not limited to, DEFENDANT's failure to account for
6 the actual hours worked (by virtue of DEFENDANT's failure to relieve Aggrieved Employees of
7 all duties during unpaid meal periods, payment according to scheduled hours rather than actual time
8 worked and time-rounding policies and practices, as described herein) and or failure to incorporate
9 all forms of non-discretionary remuneration, including but not limited to, shift differential
10 pay/multiple regular pay rates and or non-discretionary bonuses, into the sick pay calculation.
11 DEFENDANT further failed to put the Aggrieved Employees on notice of their paid sick leave
12 rights – or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice.
13 DEFENDANT failed to maintain accurate records documenting the hours worked and paid sick
14 days accrued and used by the Aggrieved Employees, in violation of Labor Code section 247.5.
15 DEFENDANT failed to provide notice of the accrued sick leave amount or balance left for the
16 Aggrieved Employees by failing to provide Aggrieved Employees with a wage statement or separate
17 writing showing the balance of accrued or available sick leave, or paid time off leave provided in
18 lieu of sick leave, on their designated pay dates with the their payment of wages, as required under
19 Labor Code section 246, and thus affected Aggrieved Employees' intelligent exercise of their paid
20 sick leave. But for this failure, Aggrieved Employees who are no longer employed with
21 DEFENDANT would have used their paid sick leave at least prior to their respective separations,
22 or on several occasions after receiving notice of the available sick leave.

23 101. Under the provisions of PAGA and the following Labor Code sections, 201-203, 210,
24 221-223, 226, 226.7, 233-234, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194,
25 1197, 1197.1, 1198, 1199, 2802, 2810.5, and all relevant sections of the applicable Wage Orders, as
26 well as all interpretations of these laws by California Courts and administrative bodies, as well as
27 any other law that is enforceable through PAGA, DEFENDANT is liable for all statutorily-specified
28 penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions

1 listed herein, or for default PAGA penalties under Labor Code section 2699(f) for any violation of
2 a Labor Code section without a specified civil penalty. Pursuant to Labor Code section 2699(g),
3 and/or any and all other applicable laws, PLAINTIFF is entitled to recover civil penalties, costs,
4 plus reasonable attorney's fees and costs, all in an amount to be proved.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for relief and judgment on behalf of himself, the Class
7 Members, the Aggrieved Employees and the State of California, as follows:

- 8 1. Certification of the above-described Class as a class action, pursuant to Code of Civil
9 Procedure section 382;
- 10 2. Certification of the above-described Class as a representative class under Business and
11 Professions Code section 17200, et seq.;
- 12 3. Provision of Class Notice to all non-exempt employees who worked for DEFENDANT
13 in California during the Class Period;
- 14 4. A declaratory judgment that DEFENDANT has knowingly and intentionally violated
15 the Business and Professions Code sections 17200-17208, by the conduct set forth
16 above;
- 17 5. A declaratory judgment that DEFENDANT's violations as described above were
18 willful;
- 19 6. An equitable accounting to identify, locate, and restore to all Class Members the wages
20 that are due;
- 21 7. An award to Plaintiff and the Class Members of damages in the amount of unpaid
22 minimum wages and overtime wages, including interest thereon, subject to proof at
23 trial;
- 24 8. An award to Plaintiff and the Class Members of damages in the amount of unpaid meal
25 and rest period premiums, pursuant to Labor Code section 226.7;
- 26 9. An award to Plaintiff and the Class Members of statutory penalties because of
27 DEFENDANT's failure to provide Plaintiff and the Class Members with itemized
28 wage statements that comply with the requirements of Labor Code section 226;

- 1 10. An award of payments due to them as waiting time penalties as to those Class
2 Members who are no longer employed by DEFENDANT, pursuant to Labor Code
3 section 203;
4 11. An award of damages to Plaintiff and Class Members for DEFENDANT's failure to
5 reimburse business expenses pursuant to Labor Code section 2802;
6 12. An award to Plaintiff and the Class Members of reasonable attorneys' fees and costs,
7 pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections 203,
8 218.5, 226, 512, 1194, and/or other applicable law;
9 13. For civil penalties according to proof, including PAGA penalties;
10 14. An award to Plaintiff and the Class Members and the Aggrieved Employees of such
11 other and further relief as this Court deems just and proper.
12

13 Dated: December 27, 2021

CROSNER LEGAL, PC

14
15 By: 

16 Michael R. Crosner, Esq.
17 Zachary M. Crosner, Esq.
18 Blake R. Jones, Esq.
19 Attorneys for Plaintiff,
20 JESUS RUIZ ESCUDERO
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EXHIBIT

1



CROSNER LEGAL

Public Interest Rights

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October 20, 2021

VIA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

ParaCorp Incorporated
Agent for Service of Process for:
Merchants Building Maintenance, LLC
2804 Gateway Oaks Drive, # 100
Sacramento, CA 95833

VIA U.S. CERTIFIED MAIL:

Merchants Building Maintenance, LLC
Attn: Legal Dept.
606 Monterey Pass Road
Monterey Park, CA 91754

Merchants Building Maintenance, LLC
Attn: Legal Dept.
1190 Monterey Pass Road
Monterey Park, CA 91754

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
Merchants Building Maintenance, LLC
Date: October 20, 2021
Subject: *Jesus Ruiz Escudero v. Merchants Building Maintenance, LLC.*

Introduction

This office represents COMPLAINANT, Jesus Ruiz Escudero (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entity and individual managing agent of said entity: Merchants Building Maintenance, LLC. (hereinafter, this entity and its managing agents collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all non-exempt workers employed by EMPLOYER from one year of the date of this notice (“AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If EMPLOYER intends to cure the alleged violations within the statutory time period set forth in sections 2699 and 2699.3(a), the EMPLOYER shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699.

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. The

specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-202, 204, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5 and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code Section 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated COMPLAINANT and other AGGRIEVED EMPLOYEES’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “*a natural person* who is an owner, director, officer, or managing agent of the employer.” The “managing agent” definition mirrors that found in California’s punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

Merchants Building Maintenance, LLC and its managing agents own, operate, or otherwise manage a company that provides janitorial and related services. While EMPLOYER may operate a successful company or have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for Merchants Building Maintenance, LLC. during the relevant period before being terminated on or about August 15, 2021. COMPLAINANT worked for EMPLOYER performing janitorial and disinfecting duties at the City Center on 6th shopping center in Los Angeles, California. At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were hourly paid, non-exempt employees.

COMPLAINANT and similarly AGGRIEVED EMPLOYEES consistently worked at least five and one half (5 ½) hours per day during the relevant time period. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were not provided thirty-minute off-duty meal periods before the end of the fifth hour of work due to the nature and constraints of their job and or pressure from supervisors to finish tasks within designated time frames. Regardless of whether a thirty-minute, off-duty meal period was provided, EMPLOYER deducted thirty minutes per day, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were never paid a meal period premium for these missed/non-compliant meal periods.

COMPLAINANT's and similarly AGGRIEVED EMPLOYEES' work schedules entitled them to at least two (2) rest periods per shift. COMPLAINANT and similarly AGGRIEVED EMPLOYEES did not receive compliant, timely ten-minute off-duty rest periods every four (4) hours worked (or major fraction thereof). Any purported rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints of their job duties or pressure from supervisors to skip breaks or take non-compliant breaks. EMPLOYER had no policy in place nor instruction as to the taking or timing of rest periods.

COMPLAINANT was required to pay for cleaning supplies and personal protective equipment and provide his own cleaning tools in order to complete tasks for EMPLOYER. EMPLOYER did not reimburse COMPLAINANT for these expenses he was required to incur in his job.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay employees at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to provide COMPLAINANT and similarly AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and similarly AGGRIEVED EMPLOYEES an additional hour of premium pay for missed/improper meal and/or rest periods; (5) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and similarly AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (6) failed and continues to fail to place COMPLAINANT and similarly AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (7) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (8) made unlawful deductions from COMPLAINANT and similarly AGGRIEVED EMPLOYEES' paychecks; (9) failed and continues to fail to timely pay wages to COMPLAINANT and similarly AGGRIEVED EMPLOYEES during employment and upon separation of employment; (10) failed and continues to fail to reimburse COMPLAINANT and similarly AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (11) conducts illegal background checks as a condition of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' hire or maintaining their employment; and (12) requires COMPLAINANT and similarly AGGRIEVED EMPLOYEES to impermissibly disclose arrests on their employment applications and sign off on same. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER has failed, and continues to fail, to keep accurate and complete payroll records as required by law.

EMPLOYER has failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and similarly AGGRIEVED EMPLOYEES by virtue of EMPLOYER's automatic meal break deductions and time rounding policies and practices, described herein.

EMPLOYER further failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and similarly AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' meal periods.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 5-2001 (and all applicable IWC Wage Orders), section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. Unless the employee is relieved of all duty during a thirty-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 5-2001, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code section 226.7; all applicable IWC Wage Orders, section 11(B) ("If an employer fails to provide an employee a meal period in accordance with the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

COMPLAINANT and similarly AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods and work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors pressuring them to take non-compliant breaks or skip breaks completely.

EMPLOYER implemented a policy and practice of automatically deducting thirty minutes per shift for these missed/improper meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES did not receive compliant meal periods.

EMPLOYER implemented policies and practices of not allowing COMPLAINANT and other AGGRIEVED EMPLOYEES to leave the work premises during meal periods. Moreover, EMPLOYER required COMPLAINANT and other AGGRIEVED EMPLOYEES to always monitor their walkie-talkies for communications from management, including during any meal periods. Thus, COMPLAINANT and similarly AGGRIEVED EMPLOYEES always remained under EMPLOYER's control during any meal periods, rendering any meal periods on duty and therefore noncompliant with California. EMPLOYER failed to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for time spent on duty and under EMPLOYER's control while clocked out for unpaid meal breaks.

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods resulting in COMPLAINANT and other AGGRIEVED EMPLOYEES not being paid for all time worked as well as late or shortened meal periods.

Based on information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of meal periods owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER never paid COMPLAINANT and other AGGRIEVED EMPLOYEES an additional hour of wages at their respective regular rates of pay for each workday a proper meal period was not provided. *Brinker, supra*, 53 Cal.4th 1004. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of five and one half (5 ½) hours or more. COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive an off-duty thirty (30) minute meal break before the end of the fifth hour of work. After five (5) hours of work, COMPLAINANT and other AGGRIEVED EMPLOYEES would be required to work through their meal periods. Despite not providing COMPLAINANT and other AGGRIEVED EMPLOYEES with the meal breaks to which they were legally entitled, EMPLOYER did not pay any premiums for these missed meal breaks in violation of California law or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay into the regular rate for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, section 12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code section 226.7; applicable IWC Wage Order, section 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other AGGRIEVED EMPLOYEES with appropriate rest periods at a rate of every four (4) hours worked or major fraction thereof.

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 5-2001, §20 (establishing that "in addition to any other civil 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").

COMPLAINANT and other AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law.

Any purported rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints of COMPLAINANT and other AGGRIEVED EMPLOYEES' job duties and or commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant rest breaks.

Per EMPLOYER's unlawful policies and practices, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were required to remain tethered to their worksite(s) and work communication devices at all times during their shifts, such that COMPLAINANT and similarly AGGRIEVED EMPLOYEES remained under EMPLOYER's control and on-duty during any purported rest periods, rendering those rest periods noncompliant with California law.

EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. COMPLAINANT and other AGGRIEVED EMPLOYEES were never paid a rest period premium for any missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Minimum Wage Violations: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." *Cal. Lab. Code* § 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); IWC Wage Order 5-2001, §20 (establishing that "[i]n addition to any other civil 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").

not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’S automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

COMPLAINANT and other AGGRIEVED EMPLOYEES were unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to the nature and constraints of their job duties and or commentary from supervisors requiring COMPLAINANT and other AGGRIEVED EMPLOYEES to always monitor their walkie-talkies and pressuring COMPLAINANT and other AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely.

EMPLOYER implemented a policy and practice of automatically deducting thirty minutes per shift/requiring employees to clock out thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other AGGRIEVED EMPLOYEES were working through part or all these meal periods.

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods and shift start and end times resulting in COMPLAINANT and other AGGRIEVED EMPLOYEES not being paid for all time worked.

Based on information and belief, EMPLOYER had actual or constructive knowledge that its time-rounding and auto-deduction policies and practices and failure to provide off-duty meal periods resulted in the underpayment of minimum wages owed COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order 5-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 5-2001, §20 (establishing that “[i]n addition to any other civil 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”).

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; all applicable IWC Wage Orders, section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by COMPLAINANT and other AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices described herein resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages for COMPLAINANT and those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Based on information and belief, EMPLOYER failed to pay proper overtime rates to AGGRIEVED EMPLOYEES due to EMPLOYER's failure to incorporate all forms of non-discretionary compensation, including but not limited to, shift differential pay and or non-discretionary bonus pay, into the regular pay rate for purposes of calculating the owed overtime rate, resulting in the underpayment of overtime wages owed.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide paid sick leave at all to AGGRIEVED EMPLOYEES or failed to properly accrue all owed sick leave, due to, including but not limited to, EMPLOYER's failure to account for true actual hours worked (by virtue of EMPLOYER's meal period auto-deduction and time rounding practices, as described herein) and or failure to incorporate all forms of non-discretionary remuneration, including but not limited to, non-discretionary bonus pay and or shift differential pay, into the sick pay calculation.

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order, §20 (establishing that "[i]n addition to any other civil 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").

EMPLOYER further failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice.

In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the employee throughout the relevant time period.

Throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for AGGRIEVED EMPLOYEES, and thus affecting their intelligent exercise of their paid sick leave.

But for this failure, AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by AGGRIEVED EMPLOYEES, permitting the presumption that AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article at the times of their respective separations from employment.

EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by providing COMPLAINANT all AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid and was not as a result of its failure to properly institute a paid sick leave program.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES an additional hour of pay for each meal or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁶

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

EMPLOYER's wage statements that it provided to COMPLAINANT and all AGGRIEVED EMPLOYEES failed to indicate the "total hours worked" by the COMPLAINANT and all AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods and time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*).

In addition, because of the violations detailed above, including not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code section 226 by willfully failing to furnish COMPLAINANT and all AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

As a result, the wage statements provided to COMPLAINANT and all AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

⁶ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty 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).

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁷

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other AGGRIEVED EMPLOYEES overtime wage compensation and minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

EMPLOYER failed to timely pay COMPLAINANT and other AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation.

Upon separation of employment, COMPLAINANT and other AGGRIEVED EMPLOYEES' final paychecks were not timely provided, and AGGRIEVED EMPLOYEES' final paychecks, once

⁷ See Lab. Code section 226.3 (establishing that the civil penalty is "per employee per violation").

provided, did not include all remuneration owed as they were devoid of, including but not limited to, all earned and unpaid minimum and overtime wages and all earned and unpaid sick leave wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code section 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.⁸

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

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, section 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer. Here, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to purchase their own cleaning supplies, tools, and personal protective equipment in order to perform work required by EMPLOYER.

⁸ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and other AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of AGGRIEVED EMPLOYEES' mobile phones and data usage, personal vehicle, and costs of cleaning supplies, tools, and personal protective equipment.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and other AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and other AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers.

AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cell phone/data plan charges and costs associated with having to use their personal vehicles on the job/parking expenses, as well as purchase of cleaning supplies, tools, and personal protective equipment.

EMPLOYER's failure to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and other AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Background Check Violations: The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code §1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER required COMPLAINANT and all AGGRIEVED EMPLOYEES to submit to an unlawful criminal and/or financial background check as a condition of obtaining and/or holding employment in violation of Labor Code sections 1024.5 and 432.7.

Based on information and belief, EMPLOYER also required COMPLAINANT and other AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by

the requirements set forth in CA Civil Code section 1786, et seq. and 15 U.S.C. section 1681, et seq., and thus was an unlawful background check.

Based on information and belief, EMPLOYER knew that requiring COMPLAINANT and AGGRIEVED EMPLOYEES to agree to these criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By having COMPLAINANT and other AGGRIEVED EMPLOYEES sign off on the illegal background checks, Employer also violated Labor Code § 432.5 (stating that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.”).

Based on further information and belief, EMPLOYER asked about arrests not resulting in convictions on its employment application, in violation of California law.

EMPLOYER has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties COMPLAINANT and other AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Conclusion

Labor Code section 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code sections 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all other AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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Thank you for your attention to this matter.

Best Regards,

Zachary M. Crosner

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