

1 Michael Crosner (SBN 41299)
mike@crosnerlegal.com
2 Zachary Crosner (SBN 272295)
zach@crosnerlegal.com
3 Blake Jones (SBN 211221)
blake@crosnerlegal.com
4 **CROSNER LEGAL, PC**
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
5 Tel: (310) 496-5818
Fax: (310) 510-6429
6

Attorneys for ZAFIRO MARTINEZ,
7 on behalf of herself, the State of California, and others similarly
situated and aggrieved
8

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

11 ZAFIRO MARTINEZ on behalf of herself, the
State of California, and others similarly
12 situated and aggrieved,

13 Plaintiff,

15 vs.

16 CAL POP GROUP, INC., a California
Corporation; and DOES 1 to 100, inclusive,
17

18 Defendants.

Assigned For All Purposes

Judge Randall J. Sherman

CX-105

Case No.: 30-2022-01249147-CU-OE-CXC

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, *et*
*seq.***

1 Plaintiff ZAFIRO MARTINEZ (“PLAINTIFF” or “PLAINTIFF MARTINEZ”), an
2 individual on behalf of herself, the State of California, and all other Aggrieved Employees, hereby
3 files this Complaint against Defendants CAL POP GROUP, INC., a California Corporation; and
4 DOES 1 to 100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
5 informed and believes, and on the basis of that information and belief, alleges as follows:

6 **INTRODUCTION**

7 1. This is a representative action by PLAINTIFF on behalf of herself, other similarly
8 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
9 Private Attorney General Act, Labor Code section 2698 *et. seq.*, to recover civil penalties (75%
10 payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
11 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

12 **JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
14 California statutes, including but not limited to the Private Attorneys General Act, and decisional
15 law and regulations.

16 3. Venue is proper in this judicial district and the County of Orange pursuant to
17 California Code of Civil Procedure section 395.5 because DEFENDANTS employed PLAINTIFF
18 at one or more of their facilities located in the County of Orange, and some of the acts, omissions,
19 and conduct alleged by PLAINTIFF herein occurred in this county. *Crestwood Behavioral Health,*
20 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
21 where the defendants committed Labor Code violations against some of its employees).

22 **THE PARTIES**

23 3. Defendant CAL POP GROUP, INC., is a California corporation that at all relevant
times, was authorized to do business within the State of California and is doing business in the State

1 of California.

2 4. DEFENDANTS and their managing agents own, operate, or otherwise manage
3 restaurants including Popeye's Louisiana Kitchen restaurant franchise(s).

4 5. PLAINTIFF MARTINEZ is, and at all relevant times was, an individual domiciled
5 in the State of California and a citizen of the State of California who worked as a non-exempt,
6 hourly-paid employee for DEFENDANTS in the State of California.

7 6. PLAINTIFF MARTINEZ worked for DEFENDANTS at one or more of
8 DEFENDANTS' Popeye's Louisiana Kitchen franchise(s).

9 7. PLAINTIFF MARTINEZ regularly worked at DEFENDANTS' restaurant in
10 Mission Viejo, California but was sometimes asked to work at other restaurants operated by
11 DEFENDANTS, including but not limited to a restaurant in Artesia, California.

12 8. PLAINTIFF MARTINEZ worked for DEFENDANTS in various positions including
13 but not limited to an assistant manager and general manager, from in or about December 2019 until
14 PLAINTIFF's last day worked in or about early August 2021.

15 9. The true names and capacities of the DOE DEFENDANTS sued herein as DOES 1
16 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
17 DEFENDANTS by said fictitious names. Each of the DEFENDANTS designated herein as a DOE
18 is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to
19 amend this Complaint to reflect the true names and capacities of the DOE DEFENDANTS when
20 such identities become known.

21 10. PLAINTIFF is further informed and believes that, at all relevant times, each
22 defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
23 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
predecessor in interest of some or all of the other DEFENDANTS, and was engaged with some or

1 all of the other DEFENDANTS in a joint enterprise for profit, and bore such other relationships to
2 some or all of the other DEFENDANTS so as to be liable for their conduct with respect to the
3 matters alleged in this Complaint. PLAINTIFF is further informed and believes and thereon alleges
4 that each defendant acted pursuant to and within the scope of the relationships alleged above, and
5 that at all relevant times, each defendant knew or should have known about, authorized, ratified,
6 adopted, approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

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

13 **JOINT LIABILITY**

14 12. Under California law, the definition of the term "to employ" is broadly construed
15 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
16 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
17 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
18 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control
19 was to reach situations in which multiple entities control different aspects of the employment
20 relationship. Supervision of the work, in the specific sense of exercising control over how services
21 are properly performed, is properly viewed as one of the "working conditions" mentioned in the
22 wage order. *Id.* at 76. A joint employer relationship exists when one entity hires and pays a worker,
23 and the other entity supervises the work. *Id.*

13 13. As such, California courts have recognized that the definition of "employer" for

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

7 14. PLAINTIFF is informed and believes and thereon alleges that at all relevant times,
8 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
9 human resources.

10 15. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
11 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
12 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
13 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
14 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
15 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
16 Employees. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
17 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
18 time-keeping practices, meal and rest periods, and other working conditions that were distributed
19 to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS
20 uniformly compensated and controlled the wages of PLAINTIFF and the Aggrieved Employees in
21 a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the Aggrieved
22 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
23 collectively retained the right to terminate PLAINTIFF and the Aggrieved Employees' employment
with or without cause. Upon information and belief, DEFENDANTS further collectively

1 represented to PLAINTIFF and the Aggrieved Employees in writing the details of their
2 compensation, and the manner in which they were to take meal and rest periods, the procedures
3 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
4 to PLAINTIFF and the Aggrieved Employees by which DEFENDANTS collectively would
5 evaluate the wage rates of PLAINTIFF and the Aggrieved Employees.

6 16. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
7 and working conditions of PLAINTIFF and the Aggrieved Employees. As such, DEFENDANTS
8 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
9 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
10 PLAINTIFF seeks relief in this Complaint.

11 17. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
12 control over, applied the same policies and practices, and engaged in the same acts and omissions
13 with regard to the other Aggrieved Employees.

14 18. PLAINTIFF is informed and believes and hereon alleges that DEFENDANTS
15 must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties
16 under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to
17 perform services from which they benefited, and furthermore that the aforementioned entities had
18 the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all
19 relevant times herein, so as to be considered the joint employers of PLAINTIFF.

20 19. By reason of their status as joint employers of PLAINTIFF and Aggrieved
21 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
22 Code and applicable Wage Orders as to PLAINTIFF and other Aggrieved Employees.

23 **PAGA ALLEGATIONS**

20. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,

1 Labor Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of herself, the
2 State of California and Aggrieved Employees, regarding violations of the California Labor Code as
3 set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

4 All current and former non-exempt employees that worked either directly
5 or via a staffing agency for any of the DEFENDANTS in California at
6 any time from one year plus 65 days from filing of the initial Complaint
7 through the present (“PAGA Period”).

8 21. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
9 section 2699(c), as she was employed by DEFENDANTS during the applicable statutory limitations
10 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
11 PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other Aggrieved
12 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
13 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
14 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
15 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
16 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

17 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

18 22. On December 22, 2021, PLAINTIFF MARTINEZ, through her counsel, gave written
19 notice by online filing with the California Labor and Workforce Development Agency (“LWDA”)
20 informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the
21 allegations alleged in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and
22 correct copy of the PAGA Letter also sent to DEFENDANTS via certified mail.

23 23. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California

1 Labor Code and the applicable wage orders on behalf of herself, the State of California and other
2 Aggrieved Employees.

3 24. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
4 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
5 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
6 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
7 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

8 25. As such, PLAINTIFF seeks to recover the PAGA civil penalties through a
9 representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior*
10 *Court* (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

11 FACTUAL ALLEGATIONS

12 26. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
13 employed by DEFENDANTS in the State of California as non-exempt employees. DEFENDANTS,
14 at all times, exercised control over PLAINTIFF and each of the Aggrieved Employees, and suffered
15 and/or permitted them to work.

16 27. PLAINTIFF was employed by DEFENDANTS during the relevant period and was
17 subject to one or of the Labor Code violations alleged herein. PLAINTIFF typically worked at least
18 eight (8) hours per shift, five (5) shifts per week. PLAINTIFF and Aggrieved Employees worked in
19 various positions including but not limited to, cashiers, cooks, prep, managers, supervisor and/or
20 restaurant staff.

21 28. **Meal Periods.** PLAINTIFF and the Aggrieved Employees regularly worked shifts
22 of five and one half (5 ½) hours or more and were entitled to at least one thirty-minute uninterrupted
23 meal break. However, PLAINTIFF and the Aggrieved Employees did not receive compliant thirty-
minute meal breaks or were required to work through purported meal breaks. PLAINTIFF and other

1 Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted
2 meal periods, often being forced to take late meal periods (i.e. after the fifth hour of work),
3 interrupted meal periods, and/or work through part or all their meal periods due to the nature and
4 constraints of their job duties, lack of relief workers available, requirement to stay on premises,
5 and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip
6 meal breaks completely. Per DEFENDANTS' unlawful practice and/or policy, PLAINTIFF and
7 Aggrieved Employees were instructed by their supervisors to clock out for meal periods but to
8 continue working due to understaffing, lack of coverage, and/or lack of relief workers available.

9 29. PLAINTIFF and Aggrieved Employees were consistently suffered and permitted to
10 take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut
11 short due to their need to assist customers, cook or prep food for customers, assist in the kitchen,
12 and/or complete other job duties. For example, PLAINTIFF's shift regularly started at 7:00 am or
13 8:00 am, but was often unable to take a thirty-minute meal break until after the end of the fifth hour
14 of work due to customer rush hour between the hours of 11:00 am and 2:00 pm and due to consistent
15 under staffing. Moreover, PLAINTIFF was regularly required to work the cash register due to
16 understaffing and/or because she was the only available staff member able to speak English. As a
17 result, PLAINTIFF was unable to take a meal break until after her fifth hour of work or not at all,
18 due to the nature and constraints of her job duties, lack of relief workers, and/or commentary from
19 supervisors. Moreover, PLAINTIFF was required to clock out for meal periods before the end of
20 the fifth hour even when no such meal period was provided in order to avoid disciplinary action or
21 warnings. Other Aggrieved Employees were also unable to take timely thirty-minute meal periods
22 due to the nature of their job duties, workload, and/or lack of relief workers.

23 30. DEFENDANTS further implemented policies and practices that failed to relieve
PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control during

1 unpaid meal breaks. For example, at times, PLAINTIFF and other Aggrieved Employees, clocked
2 out for a meal break, but continued assisting customers or tending to other work-related tasks.

3 31. Despite failing to provide lawful meal periods, DEFENDANTS implemented a
4 policy and/or practice of automatically deducting at least thirty minutes per shift for these
5 missed/unlawful meal periods, despite having actual and/or constructive knowledge that
6 PLAINTIFF and other Aggrieved Employees did not receive compliant meal periods.

7 32. Based on information and belief, DEFENDANTS had actual and/or constructive
8 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods owed
9 to PLAINTIFF and other Aggrieved Employees, in violation of California's meal period laws. Yet
10 DEFENDANTS failed to take any action to remedy the situation in order to allow PLAINTIFF and
11 Aggrieved Employees to take compliant, non-interrupted meal periods.

12 33. DEFENDANTS also failed to keep accurate records of the start and end times of
13 PLAINTIFF's and Aggrieved Employees' meal periods. Based on further information and belief,
14 DEFENDANTS illegally rounded the start and end times of employee meal periods resulting in
15 PLAINTIFF and other Aggrieved Employees not being paid for all time worked as well as late
16 and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. Moreover,
17 DEFENDANTS regularly recorded PLAINTIFF's meal periods as if they were timely taken, even
18 though a meal period was not actually afforded at this time and/or were otherwise not in accordance
19 with California law.

20 34. Based on further information and belief, DEFENDANTS did not have a written meal
21 break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the
22 Aggrieved Employees can be established by evidence that an employer adopted a uniform corporate
23 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.

1 *Brinker, supra*, 53 Cal.4th 1004.

2 35. PLAINTIFF is further informed and believes and thereon alleges that
3 DEFENDANTS had actual and/or constructive knowledge that their time-rounding and auto-
4 deduction policies and practices resulted in the denial of meal periods owed to PLAINTIFF and
5 other Aggrieved Employees, in violation of California's meal period laws.

6 36. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
7 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)
8 minute second meal break. DEFENDANTS failed to provide PLAINTIFF and Aggrieved
9 Employees with a second meal period despite consistently working over ten hours in a workday and
10 thus being entitled to a second duty-free, uninterrupted, thirty-minute meal period before the end of
11 the tenth hour of work. Per DEFENDANTS' unlawful meal period policies and practices,
12 DEFENDANTS only provided a single meal period per shift, regardless of the number of hours
13 worked, and that single meal period was non-compliant. For example, PLAINTIFF regularly
14 worked over ten hours per day, but was not afforded a second uninterrupted (30) minute meal period.

15 37. Upon information and belief, DEFENDANTS failed to pay PLAINTIFF and other
16 Aggrieved Employees, an additional hour of wages at their respective regular rates of compensation
17 for each workday a proper meal period was not provided. DEFENDANTS either failed to pay a
18 meal period premium at all for each workday a proper meal period was not provided and/or failed
19 to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration,
20 including but not limited to, shift differential pay, bonuses, and/or other non-discretionary
21 compensation into the regular rate or compensation for purposes of calculating the owed meal period
22 premium.

23 38. **Rest Periods.** DEFENDANTS did not properly authorize and provide PLAINTIFF
and other Aggrieved Employees with legally compliant rest periods at a rate of every four (4) hours

1 worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work
2 period, as required by law.

3 39. PLAINTIFF and other Aggrieved Employees were not adequately informed,
4 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
5 law. Any purported rest periods were consistently interrupted, cut short, on duty, restricted to
6 premises, and/or late due to the nature and constraints of PLAINTIFF's and other Aggrieved
7 Employees' job duties, need to assist customers, understaffing, and/or commentary from supervisors
8 pressuring them to skip rest periods completely or take non-compliant rest periods. PLAINTIFF and
9 similarly Aggrieved Employees were also required to work during the restaurant's busy hours as an
10 "all hands-on deck" approach was expected by DEFENDANTS. As such, PLAINTIFF and other
11 Aggrieved Employees were pressured to complete their work duties such that rest breaks were only
12 taken once jobs were completed/as time permitted.

13 40. Based on information and belief, DEFENDANTS had no policy in place nor
14 instruction as to the taking, timing, or duty-free nature of rest periods. Moreover, DEFENDANTS
15 implemented policies and/or practices that failed to relieve PLAINTIFF and other Aggrieved
16 Employees of all duties and DEFENDANTS' control during rest periods.

17 41. Despite not providing lawful rest periods during the PAGA Period, DEFENDANTS
18 failed to pay PLAINTIFF and other Aggrieved Employees with an additional hour of pay at
19 PLAINTIFF's and other Aggrieved Employees' regular rates of compensation for each missed, or
20 otherwise unlawful rest period. Based on information and belief, DEFENDANTS either failed to
21 pay a rest period premium at all for each workday a proper rest period was not provided and/or
22 failed to pay the proper rest period premium for failure to incorporate all non-discretionary
23 remuneration, including but not limited to, shift differential pay, bonuses, and/or other non-
discretionary compensation into the regular rate of compensation for purposes of calculating the

1 owed rest period premium.

2 42. By failing to provide rest periods for every four (4) hours or major fraction thereof,
3 and by failing to provide compensation for these missed or unlawful rest periods, DEFENDANTS
4 willfully violated the provisions of Labor Code section 226.7.

5 43. **Failure to Provide Suitable Resting Facilities.** DEFENDANTS did not provide
6 PLAINTIFF and other Aggrieved Employees with suitable resting facilities during their hours of
7 work, particularly during meal and/or rest periods. For example, PLAINTIFF and other Aggrieved
8 Employees were not allowed to sit in the restaurant at all during working hours, nor were they
9 provided with a break room. Moreover, DEFENDANTS did not inform PLAINTIFF and other
10 Aggrieved Employees of their rights to suitable resting facilities under California law.

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

20 45. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
21 other Aggrieved Employees violated and continues to violate the applicable Wage Order, and Labor
22 Code section 1198.

23 46. **Unpaid Wages.** DEFENDANTS failed to compensate PLAINTIFF and other
Aggrieved Employees for all hours worked, including all owed minimum and overtime wages. As

1 explained above, PLAINTIFF and the Aggrieved Employees were consistently unable to take off
2 duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their
3 meal periods due to understaffing, lack of relief workers, the nature and constraints of their job
4 duties and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved Employees to
5 take non-compliant meal periods or skip meal periods completely, as alleged above.

6 47. On information and belief, the work time reported by PLAINTIFF and Aggrieved
7 Employees was rounded and automatically deducted for at least 30 minutes of wages per shift for
8 interrupted and/or otherwise unlawful meal periods. Moreover, DEFENDANTS frequently required
9 PLAINTIFF and other Aggrieved Employees to clock out for at least thirty minutes per shift for
10 meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other
11 Aggrieved Employees were working through part or all of these purported meal periods, depriving
12 them of all owed wages, including minimum and overtime wages.

13 48. Based on further information and belief, DEFENDANTS rounded the start and end
14 times of Aggrieved Employees' meal periods and shift start and shift end times resulting in
15 PLAINTIFF and other Aggrieved Employees not being paid for all time worked. PLAINTIFF
16 alleges on information and belief that DEFENDANTS implemented a time-rounding system that as
17 applied systematically deprived PLAINTIFF and other Aggrieved Employees of compensable time
18 because the time-rounding system implemented by DEFENDANTS would almost always, if not
19 always, result in understating actual compensable work time.

20 49. Moreover, PLAINTIFF and other Aggrieved Employees were required to perform
21 pre-shift and post-shift off-the-clock work. For example, DEFENDANTS required Aggrieved
22 Employees to undergo a Covid-related temperature check and answer Covid-related screening
23 questions prior to clocking in for their shifts, which took at least 5 minutes each workday.
DEFENDANTS did not record and did not compensate PLAINTIFF and Aggrieved Employees for

1 this pre-shift work time, resulting in daily off-the-clock work and the underpayment of minimum
2 and overtime wages owed to PLAINTIFF and other Aggrieved Employees.

3 50. Based on further information and belief, DEFENDANTS required/require
4 PLAINTIFF and other Aggrieved Employees to undergo Covid testing outside of their scheduled
5 shift times without compensating them for the travel time to/from the testing sites, time spent
6 waiting for the tests to be performed, and time spent undergoing testing, resulting in significant off-
7 the-clock work. This regular performance of off-the-clock work resulted in DEFENDANTS
8 underpaying minimum and overtime wages owed to PLAINTIFF and other Aggrieved Employees.

9 51. Moreover, DEFENDANTS required Aggrieved Employees to perform pre-shift and
10 post shift off-the-clock work when opening or closing the restaurant. For example, when
11 PLAINTIFF opened the restaurant, she was required to unlock the door and disable the alarm before
12 clocking-in to work which resulted in at least a few minutes of off-the-clock work. Similarly, when
13 closing the restaurant, PLAINTIFF was required to first clock-out, then enable the alarm, and then
14 close all doors. This amounted to at least an additional few minutes of post-shift off-the-clock work.

15 52. Additionally, DEFENDANTS required Aggrieved Employees to pick up their
16 paychecks at the restaurant they regularly worked at. On pay days, Aggrieved Employees were
17 required to travel to and from their assigned restaurant in order to pick up their bi-weekly paycheck.
18 This work time was off-the-clock and was not recorded. As such, Aggrieved Employees were not
19 compensated for time spent obtaining/collecting his or her paycheck.

20 53. Based on information and belief, DEENDANTS had actual and/or constructive
21 knowledge that its time-rounding policies/practices, auto-deduction policies/practices, failure to
22 provide off-duty meal periods, and other mandated off-the-clock work described above resulted in
23 the underpayment of minimum wages and overtime wages owed to PLAINTIFF and other
Aggrieved Employees.

1 54. Based on information and belief, DEFENDANTS failed to pay Aggrieved
2 Employees' twice their regular rate of pay for time worked beyond twelve (12) hours per workday
3 and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week,
4 in violation of California's minimum and overtime laws.

5 55. DEFENDANTS' automatic deduction and time rounding policies and practices for
6 meal periods, start shift times and end times, and mandated pre-shift and post shift off-the-clock
7 work, and other off-the-clock work described above resulted in the failure to account for all hours
8 worked and thus the denial of minimum wages as well as overtime wages to PLAINTIFF and
9 Aggrieved Employees who worked more than eight (8) hours in a day or more than forty (40) hours
in a week.

10 56. Based on further information and belief, DEFENDANTS failed to properly blend
11 multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation
12 and underpayment of overtime wages owed to PLAINTIFF and other Aggrieved Employees.

13 57. Based on further information and belief, DEFENDANTS also failed to pay the
14 correct overtime rate to Aggrieved Employees due to DEFENDANTS' failure to incorporate all
15 forms of non-discretionary remuneration, including but not limited to, shift differential pay, bonus
16 pay and/or other non-discretionary pay, into the regular rate of pay for purposes of calculating the
17 owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to
18 PLAINTIFF and other Aggrieved Employees.

19 58. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
20 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
21 required by Labor Code section 1174, 1198, 1199, and the applicable Wage Order, including but
22 not limited to Wage Order 5-2001, section 7. DEFENDANTS failed, and continue to fail, to keep
23 accurate and complete payroll records as required by law, including but not limited to the following

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

4 59. DEFENDANTS have failed and continue to fail to keep accurate and complete
5 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
6 break deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
7 employer control during unpaid meal periods, failure to record the true start and end times of meal
8 periods, shift start times and shift end times, and other off-the-clock work policies and practices
described herein.

9 60. **Failure to Provide Suitable Seating.** Per section 14(A-B) of all applicable IWC
10 Wage Orders, employees shall be provided with suitable seats when the nature of the work
11 reasonably permits the use of seats and when they are not actively engaged in the work duties that
12 would not permit them to be seated.

13 61. DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees with
14 suitable seating and when such employees were not engaged in duties which required them to stand,
15 no seating was placed in reasonable proximity to their workstations.

16 62. Moreover, the nature of the work reasonably permitted the use of seats for at least
17 part of the time that PLAINTIFF and other Aggrieved Employees were working. Tasks including
18 but not limited to operating the point-of-sale system, handing a receipt and change to customers,
19 greeting customers, providing customer service, waiting for food to be prepped, taking orders,
20 handing orders to customers, and/or waiting for the next customer can all be performed while seated.
21 Moreover, based on information and belief, the physical configuration of the workspace behind the
22 front-end check stand can accommodate one or more seats, and such suitable seats exist. For
23 example, a lean stool could fit behind the front-end check stand and be safely used while taking

1 orders (either in-store orders or drive-through orders), and/or while checking out customers. Lastly,
2 there were periods of time when PLAINTIFF and other Aggrieved Employees were not engaged in
3 active duties of their employment, yet there were no suitable seats in reasonable proximity to the
4 work area and use of seats would not interfere with the performance of their duties.

5 63. PLAINTIFF and the other Aggrieved Employees worked in various positions. The
6 nature of their work reasonably permitted the use of seats. However, DEFENDANTS failed to
7 provide suitable seating in reasonable proximity to PLAINTIFF and the other Aggrieved
8 Employees' work areas in violation of the applicable Wage Order and in violation of Labor Code
9 section 1198 and 1199.

10 64. **Standard Conditions of Labor violations.** DEFENDANTS' unlawful policies and
11 practices described herein also resulted in violations of Labor Code Sections 1198 and 1199, which
12 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage
13 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,
14 and 1198, or order or ruling of the commission.

15 65. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
16 recordkeeping provisions, minimum wages and overtime wages, seating violations, and resting
17 facilities violations, result in separate violations of sections 1198 and 1199.

18 66. **Refusal to Make Payment:** DEFENDANTS violated and continue to violate Labor
19 Code section 216 by failing to pay PLAINTIFF and Aggrieved Employees for all hours worked at
20 the proper wage rate and by failing to pay PLAINTIFF and Aggrieved Employees an additional
21 hour of pay for each meal/rest period not provided or that was otherwise unlawful. *Gould v.*
22 *Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

23 67. **Statutory Wage Violations:** As described above, DEFENDANTS willfully and
systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages

1 for all hours worked which resulted in the payment of less than the statutorily required wages owed
2 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
3 not limited to, overtime wages and minimum wages, to which they were entitled to under California
4 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
5 Aggrieved Employees lower wages than those they were entitled to while purporting that
6 PLAINTIFF and other Aggrieved Employees were properly paid.

7 68. **Unreimbursed Business Expenses.** DEFENDANTS also failed to compensate
8 PLAINTIFF and the Aggrieved Employees for business-related expenses incurred in direct
9 consequence of the discharge of their duties or of their obedience to the directions of the employer.

10 69. DEFENDANTS shifted the cost of doing business onto PLAINTIFF and Aggrieved
11 Employees by requiring them to pay for DEFENDANTS' business expenses, including but not
12 limited to, use of PLAINTIFF's and other Aggrieved Employees' mobile phone and data usage, as
13 well as costs associated with the purchase and or maintenance of uniforms/clothing/ and/or vehicle-
related expenses incurred on the job.

14 70. For example, PLAINTIFF was required to use her personal phone to respond to
15 work-related inquiries from coworkers and/or supervisors. Moreover, PLAINTIFF was not
16 reimbursed for the use of her personal vehicle when required to travel from one of DEFENDANTS'
17 restaurants/locations to another. Moreover, every day (except Sundays) DEFENDANTS required
18 that PLAINTIFF or another Aggrieved Employee drive his or her own vehicle to the bank to make
19 deposits for their assigned restaurant. PLAINTIFF regularly drove to the bank in her personal
20 vehicle to make such deposits. Sometimes, other Aggrieved Employees were tasked with driving
21 their personal vehicle to make the daily deposit. DEFENDANTS did not reimburse PLAINTIFF
and other Aggrieved Employees for mileage, and/or the use of his or her personal vehicle.

22 71. DEFENDANTS also required COVID testing, yet DEFENDANTS did not
23

1 compensate PLAINTIFF and other Aggrieved Employees for the cost of traveling and/or using a
2 personal vehicle to and from a testing site.

3 72. On pay days, DEFENDANTS required PLAINTIFF to clock into her regularly
4 assigned store, then drive to a different facility operated by DEFENDANTS to pick up paychecks
5 for the other Aggrieved Employees, then return to PLAINTIFF's regularly assigned restaurant to
6 distribute the paychecks. PLAINTIFF was not reimbursed for the use of her personal vehicle when
7 commuting from one of DEFENDANTS' locations to another. Similarly, Aggrieved Employees
8 were not reimbursed for the use of their personal vehicle and/or mileage used to drive to and from
9 their regularly assigned restaurant to pick up their paycheck on pay days.

10 73. As such, DEFENDANTS failed and continues to fail to compensate for vehicle-
11 related expenses at the Internal Revenue Service (IRS) mandated per mile compensation for the
12 relevant time period.

13 74. DEFENDANTS also failed to reimburse PLAINTIFF and Aggrieved Employees for
14 costs associated with the purchase and/or maintenance of uniforms including but not limited to work
15 clothing, visors, aprons and/or shirts with DEFENDANTS' logo.

16 75. Upon information and belief, DEFENDANTS also failed to reimburse PLAINTIFF
17 and Aggrieved Employees for bank fees they were charged when DEFENDANTS provided them
18 with paychecks from an account that did not maintain sufficient funds, which resulted in a bounced
19 check.

20 76. DEFENDANTS' failure to provide PLAINTIFF and other Aggrieved Employees
21 with full reimbursement for all reasonable expenses associated with carrying out their duties
22 required that PLAINTIFF and other Aggrieved Employees subsidize and/or carry the burden of
23 business expenses in violation of Labor Code section 2802.

77. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to

1 provide PLAINTIFF and the Aggrieved Employees with accurate wage statements that complied
2 with Labor Code section 226. DEFENDANTS provided PLAINTIFF and other Aggrieved
3 Employees with wage statements that failed to indicate the earned gross and net wages earned during
4 the pay period, the correct applicable rates of pay for all hours worked, and the total hours worked
5 (by virtue of the automatic deduction for meal periods and time-rounding policies and practices, off-
6 the-clock work policies and practices, and failure to pay meal and rest break premiums) all described
7 in greater detail *supra*), which results in a violation of Labor Code section 226(a).

8 78. Separately, based on information and belief, DEFENDANTS wage statements
9 further violate Labor Code section 226(a), by among other things, failing to list the correct name
10 and address of the legal entity that is the employer.

11 79. **Sick Leave.** Throughout the relevant time period, DEFENDANTS either failed to
12 provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate
13 of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the accrued sick
14 leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction
15 policies and practices for meal periods and shift start and end times/ or other required off-the-clock
16 work described herein) and by failing to incorporate multiple rates of pay and/or all non-
17 discretionary remuneration, including but not limited to, non-discretionary shift differential pay and
18 bonuses (including but not limited to, performance bonuses/bonuses for meeting quotas), and/or
19 other non-discretionary compensation into the sick leave pay rate calculation.

20 80. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
21 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
22 entitlement to sick leave in a Labor Code section 2810.5 notice. Additionally, DEFENDANTS failed
23 to provide notice of the correct sick leave amount balance available to PLAINTIFF and other
Aggrieved Employees on their wage statements or other written statement. Moreover,

1 DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick
2 leave.

3 81. Throughout the relevant time period, DEFENDANTS failed to provide notice of the
4 balance of sick leave pay left for PLAINTIFF and all Aggrieved Employees, thus affecting their
5 intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and all Aggrieved
6 Employees would have used their paid sick leave at least prior to their respective separations, for as
7 on several occasions thereafter, he or she would have been entitled to use the banked sick leave and
8 earn appropriate compensation.

9 82. As such, DEFENDANTS unlawfully retained and continue to retain paid sick leave
10 that should have been paid and was not as a result of their failure to properly institute a lawful paid
11 sick leave program. These unlawful practices and policies violate California's sick leave laws, Labor
12 Code section 245-248.5.

13 83. **Untimely Payment of Final Wages.** Based on information and belief,
14 DEFENDANTS failed to timely pay Aggrieved Employees all wages that were due and owing upon
15 termination or resignation. Labor Code sections 201 and 202, together require employers to pay all
16 wages immediately upon discharge and within 72 hours of an employees' resignation. Based on
17 information and belief, DEFENDANTS provide final wages to Aggrieved Employees on the regular
18 pay day without regard to the timing requirements of Labor Code section 201-202. For example,
19 PLAINTIFF's personnel file lists August 6, 2021, as the date of resignation and last date worked.
20 Yet, PLAINTIFF's final wage statement provided by DEFENDANTS is dated August 12, 2021,
21 well over three days from the date of resignation.

22 84. Upon separate of employment, Aggrieved Employees' final paychecks were not
23 timely provided and/or were not timely provided with all owed vacation pay. Moreover, Aggrieved
Employees' final paychecks, once provided, did not include all wages owed as they were devoid of,

1 including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation
2 pay, and all owed sick leave and or paid time off wages at the properly accrued rates.

3 85. These violations subject DEFENDANTS to civil penalties under Labor Code section
4 203, 210, and/or 256.

5 **Unlawful Agreements/Unlawful Criminal and Financial Background Checks:**

6 Unlawful Financial and Criminal Background Checks

7 86. Based on information and belief, DEFENDANTS ordered unlawful financial credit
8 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
9 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
10 employment, in violation of California and Federal law, which results in a further violation of Labor
11 Code section 432.5.

12 87. Based on information and belief, DEFENDANTS required PLAINTIFF and all
13 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
14 checks as a condition of obtaining and/or holding employment in violation of the Investigative
15 Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair
16 Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.)

17 88. Based on information and belief, DEFENDANTS required PLAINTIFF and other
18 Aggrieved Employees to agree in writing to a background check which failed to abide by the
19 requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*,
20 including but not limited to by failing to provide a clear and conspicuous disclosure, failing to
21 provide disclosures free of extraneous information, failing to provide a lawful purpose for the
22 background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
23 failing to provide a way by which the individual can request a copy of the report, and failing to
properly obtain authorization or consent to such a background check, and thus was an unlawful

1 background check.

2 89. By requiring PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
3 criminal and/or financial checks not in conformance with the applicable laws, DEFENDANTS
4 violated Labor Code section 432.5.

5 90. Based on further information and belief, DEFENDANTS also required Aggrieved
6 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
7 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
8 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
9 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

10 91. Based on further information and belief, DEFENDANTS knew that requiring
11 PLAINTIFF and Aggrieved Employees to agree to unlawful criminal and/or financial background
12 checks as a condition of obtaining and/or holding employment was unlawful.

13 92. By requiring PLAINTIFF and other Aggrieved Employees sign off on the illegal
14 background and financial checks, DEFENDANTS also violated Labor Code section 432.5.

15 Unlawful Inquires into Criminal History

16 93. Labor Code section 432.7 prohibits an employer from asking applicants about past
17 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
18 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
19 convictions on its employment application, in violation of California law.

20 94. Upon information and belief, DEFENDANTS, in violation of California law,
21 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
22 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
23 employment and/or otherwise impermissibly inquired into criminal history on its employment
application in violation of California law.

1 95. As such, Aggrieved Employees continue to be subject to various unlawful provisions
2 as a condition of employment.

3 96. Each violation of each Labor Code section and Wage Order provision results in a
4 separate civil penalty for PLAINTIFF and each Aggrieved Employee.

5 97. PLAINTIFF is informed and believes that DEFENDANTS engaged in these same
6 herein described unlawful practices with regard to all of the Aggrieved Employees.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**

9 **2698, *ET SEQ.***

10 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all**
11 **Defendants)**

12 98. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 **Failure to Keep Accurate Records**

14 99. California Labor Code § 1174 requires employers to keep “accurate and complete”
15 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
16 IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), § 7 similarly requires employers
17 to keep time records reflecting the times during which all owed meal periods were provided each
18 day.

19 100. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
20 and complete records as required by law, including but not limited to the following records: total
21 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
22 Aggrieved Employees began and ended each work period, time records of meal periods, shift start
23 times and end times, and accurate itemized wage statements.

 101. DEFENDANTS’ failure to keep “accurate and complete” payroll records for

1 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
2 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties
3 under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section
4 and Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for
5 each pay period during which the referenced statutes and Wage Order provisions were violated.¹

6 **Meal Period Violations**

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

12 103. Employers must also provide employees with a second duty-free, uninterrupted thirty
13 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
14 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
15 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
16 hours but no more than six (6) hours, the required meal period may be waived by mutual consent
17 of the employer and employee, and (2) if an employee's total work period in a day is over ten (10)
18 hours but no more than twelve (12) hours, the required second meal period may be waived by
19 mutual consent of the employer and employee, but only if the first meal period was not waived.
20 *Ibid.*

21 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
22 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
23 employee was underpaid”); IWC Wage Order 5-2001 (and all applicable wage orders), § 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”) (emphasis added).

1 104. Employers covered by any and all applicable IWC Wage Orders have an obligation
2 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
3 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
4 presumed that no meal period was provided. IWC Wage Order 5-2001 and all applicable IWC
5 Wage Orders, section 7(A)(3) (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th
6 1004, 1052-1053, citing section 7(A)(3) (“If an employer’s records show no meal period for a given
7 shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty
8 and no meal period was provided”).

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

16 106. DEFENDANTS have a consistent policy and/or practice of not providing lawful
17 meal periods to PLAINTIFF and all Aggrieved Employees and/or providing compensation in lieu
18 thereof. As explained herein, PLAINTIFF and other Aggrieved Employees consistently unable to
19 take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
20 periods, interrupted meal periods and/or work through part or all their meal periods due to the
21 nature and constraints of their job duties, lack of relief workers available, requirement to stay on
22 premises, and/or commentary from supervisors pressuring them to take non-compliant meal breaks
23 and/or skip meal breaks completely.

 107. Despite failing to provide timely meal periods, PLAINTIFF and Aggrieved

1 Employees were instructed by their supervisors to clock out for meal periods but to continue
2 working due to understaffing, lack of coverage, and/or lack of relief workers. As such,
3 DEFENDANTS failed to keep accurate records of the start and end times of PLAINTIFF's and
4 Aggrieved Employees' meal period start and end times.

5 108. Moreover, based on information and belief, DEFENDANTS rounded the start and
6 end time of employees' meal periods and/or automatically deducted thirty minutes per shift despite
7 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did
8 not receive compliant meal periods.

9 109. Despite not providing PLAINTIFF and other Aggrieved Employees with the meal
10 breaks to which they were legally entitled, DEFENDANTS did not pay premiums for these missed
11 meal breaks in violation of California law or failed to pay the proper meal period premium for
12 failure to incorporate all non-discretionary remuneration including but not limited to, shift
13 differential pay, bonuses, and/or other non-discretionary compensation into the regular rate or
14 compensation for purposes of calculating the owed meal period premium.

15 110. These unlawful meal period policies and practices result in violations of Labor Code
16 sections 226.7, 512, and 1198-1199, and IWC Wage Order 5-2001 (and all applicable wage orders),
17 § 11. These violations subject DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1
18 and 2699, and all applicable Wage Orders, § 20. These practices result in further violations such
19 as violations of Labor Code § 1174 as discussed above, and other violations discussed below.

20 **Rest Period Violations**

21 111. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
22 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
23 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
"insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),

1 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
2 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up
3 to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.*
4 at 1029). The rest period requirement obligates employers to permit and authorize employees to
5 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
6 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
7 Cal.5th 257. If the employer fails to provide any required rest period, the employer must pay the
8 employee one hour of pay at the employee's regular rate of compensation for each workday the
9 employer did not provide at least one legally required rest period, pursuant to Labor Code section
10 226.7, and applicable IWC Wage Order, §12(B).

11 112. As explained above, DEFENDANTS did not properly authorize and provide
12 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
13 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
14 middle of the work period, as required by law. Any purported rest periods were consistently
15 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature
16 and constraints of PLAINTIFF and other Aggrieved Employees' job duties and/or commentary
17 from supervisors pressuring them to skip rest breaks completely or take non-compliant rest periods.

18 113. Moreover, based on information and belief, DEFENDANTS failed to pay
19 PLAINTIFF and other Aggrieved Employees an additional hour of pay at PLAINTIFF's and other
20 Aggrieved Employees' regular rates of compensation for each missed or improper rest period.
21 DEFENDANTS also failed to pay the proper rest period premium for failure to incorporate all non-
22 discretionary remuneration including but not limited to, shift differential pay, bonuses, and/or other
23 non-discretionary compensation into the regular rate of compensation for purposes of calculating
the owed rest period premium.

1 114. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
2 IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), §12. These violations subject
3 DEFENDANTS to civil penalties under Labor Code §§ 558 and 2699, and Wage Order 5-2001,
4 §20.

5 **Failure to Provide Suitable Resting Facilities:**

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

10 116. As explained above, DEFENDANTS did not provide PLAINTIFF and Aggrieved
11 Employees with suitable resting facilities during their hours of work, particularly during meal
12 and/or rest periods. As such, DEFENDANTS violated and continue to violate the applicable Wage
13 Order, including but not limited to IWC Wage Order 5-2001, section 13(B) and the California
Labor Code, including but not limited to section 1198.

14 **Minimum and Overtime Wage Violations**

15 117. California law provides that employees in California must be paid for all hours
16 worked, up to 40 per week or 8 per day, at a regular rate that is no less than the mandated minimum
17 wage. See Labor Code section 1197 and the applicable Wage Order. The minimum wage standard
18 applies to each hour employees worked for which they were not paid. Therefore, an employer’s
19 failure to pay for any particular hour worked by an employee is unlawful even if averaging an
20 employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

21 118. California law also provides that employees in California must be paid overtime,
22 equal to 1.5 times the employee’s regular rate of pay for all hours worked in excess of 40 hours per
23

1 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
2 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
3 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
4 consecutive day of work in a work week. *Ibid*.

5 119. As alleged herein, PLAINTIFF and the Aggrieved Employees regularly worked
6 minimum and overtime hours for which they were not compensated as required by California law.
7 DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees for all hours
8 worked by virtue of DEFENDANTS' automatic deductions and time rounding policies, payment
9 according to scheduled hours worked instead of actual time worked, mandated pre-shift/post shift/
10 and/or other off-the-clock work policies and/or practices described above, and failure to relieve
11 employees of all duties/employer control during unpaid meal periods or otherwise unlawful
practices for missed or improper meal periods.

12 120. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
13 and unpaid overtime wages owed to PLAINTIFF and those Aggrieved Employees that worked
14 more than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid double
15 time wages.

16 121. Moreover, based in information and belief, DEFENDANTS failed to pay proper
17 overtime rates to PLAINTIFF and Aggrieved Employees for their failure to incorporate all forms
18 of non-discretionary compensation, including but not limited to, shift differential pay and/or non-
19 discretionary bonus pay, and/or other non-discretionary pay into the regular rate of compensation
20 for purposes of calculating the owed overtime rate resulting in the underpayment of overtime wages
owed.

21 122. Based on information and belief, DEFENDANTS had actual or constructive
22 knowledge that its unlawful policies and practices resulted in the underpayment of minimum wages
23

1 and overtime wages owed to PLAINTIFF and other Aggrieved Employees, in violation of
2 California's minimum and overtime wage laws.

3 123. These violations subject DEFENDANTS to civil penalties under Labor Code
4 sections 558, 558.1, 218.5, 1197.1, 2699, and Wage Order 5-2001 (and all applicable IWC Wage
5 Orders).

6 **Statutory Wage Violations**

7 124. California Labor Code section 223 makes it unlawful for an employer to secretly pay
8 wages lower than required by statute while purporting to pay legal wages. As described above,
9 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
10 earned minimum and overtime compensation for all hours worked which resulted in the payment
11 of less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
12 statutory wages, including, but not limited to, overtime wages and minimum wages, to which they
13 were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other
14 Aggrieved Employees lower wages than those they were entitled to while purporting that
15 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, PLAINTIFF and
16 other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest
thereon, pursuant to Labor Code § 2699(f)-(g).

17 **Refusal to Make Payment**

18 125. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
19 and payable and/or denial of the validity of any claim to wages due. DEFENDANTS violated/
20 continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
21 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
22 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
23 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil

1 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
2 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

3 **Seating Violations**

4 126. California law provides that employees shall be provided with suitable seats when
5 the nature of the work reasonably permits the use of seats and when they are not engaged in the
6 active work duties that would not permit them to be seated.

7 127. IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), Section 14(A-B)
8 provides:

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

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

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

18 129. As alleged herein, the nature of PLAINTIFF's and other Aggrieved Employees'
19 work reasonably permitted the use of seats, but no such seats were provided. Moreover, there were
20 periods of time when PLAINTIFF and Aggrieved Employees were not engaged in active duties of

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

1 their employment, yet there were no suitable seats in reasonable proximity to the work area even
2 when the use of seats would not interfere with the performance of their duties.

3 130. As such, DEFENDANTS violated and continue to violate Wage Order 5-2001
4 section 14(A)-(B) and Labor Code sections 1198 and 1199 by failing to provide suitable seats to
5 PLAINTIFF and Aggrieved Employees, subjecting DEFENDANTS to civil penalties under Labor
6 Code sections 1199 and 2699.

7 **Business Expense Violations**

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

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

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

1 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
2 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further,
3 “any contract or agreement, express or implied, made by any employee to waive the benefits of
4 this article or any part thereof, is null and void, and this article shall not deprive any employee or
5 his personal representative of any right or remedy to which he is entitled to under the laws of this
6 State.” *See* Cal. Lab. Code section 2804.

7 134. At all relevant times, PLAINTIFF and Aggrieved Employees were improperly
8 required to provide and maintain work tools that are supposed to be the responsibility of the
9 employer, including but not limited to, use of a personal cell phone/data plan charges incurred as a
10 result of being required to use their personal cell phones, vehicle use and mileage, bank fees for
11 bounced checks, and costs associated with the purchase and maintenance of work
uniforms/clothing.

12 135. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
13 Employees were entitled to be reimbursed for all reasonable expenses associated with carrying out
14 orders by their employer and/or carrying out the duties assigned by their employers.

15 136. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
16 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
17 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
18 Code § 2802 and the applicable Wage Order.

19 **Wage Statement Violations**

20 137. California law requires every employer semi-monthly or at the time of each payment
21 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
22 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
23 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

1 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
2 is paid; (7) the name of the employee and only the last four digits of his or her social security
3 number or an employee identification number other than a social security number; (8) the name
4 and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate. Lab.
6 Code § 226.

7 138. Due to violations detailed above, including but not limited to, DEFENDANTS'
8 failure to pay regular and overtime wages for all hours worked, failure to pay all sick leave wages
9 at the proper rates, and failure to provide meal and rest break premiums, DEFENDANTS have
10 violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and Aggrieved
11 Employees with accurate, itemized wage statements that listed the earned gross and net wages
12 earned and the correct applicable rates of pay for all hours worked. Moreover, wage statements
13 provided by DEFENDANTS failed to list the "total hours worked" by the PLAINTIFF and
14 Aggrieved Employees (by virtue of the automatic deduction for meal periods and time-rounding
15 policies and practices and other off-the-clock work policies and practices, all described in greater
16 detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours
17 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
(*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

18 139. DEFENDANTS' failure to accurately list all hours worked on all wage statements
19 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
20 Employees over whether they received all wages owed to them.

21 140. Separately, based on information and belief, DEFENDANTS issued wage statements
22 that further violate Labor Code section 226(a), by failing to list the correct name and address of the
23 legal entity that is the employer.

1 141. As a result, PLAINTIFF and the Aggrieved Employees have suffered injury as they
2 could not easily determine whether they received all wages owed to them and whether they were
3 paid for all hours worked.

4 142. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
5 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
6 during which the statute provisions were violated. ³

7 **Standard Conditions of Labor Violations**

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

15 **Sick Leave Violations**

16 144. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
17 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
18 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
19 DEFENDANTS’ failure to account for actual hours worked (by virtue of DEFENDANTS’ meal
20 period auto-deduction, and time rounding practices, and off-the-clock work described herein),
21 and/or failure to incorporate all forms of non-discretionary remuneration into the sick pay
22 calculation.

23 ³ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

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

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

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

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

19 149. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

20 150. On information and belief, PLAINTIFF alleges that all of these practices were
21 experienced and continue to be experienced by other similarly Aggrieved Employees.

22 151. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, including but
23 not limited to injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

Untimely Payment of Final Wages

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

8 153. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
9 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
10 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
11 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
12 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).

13 154. Upon information and belief, DEFENDANTS fail to timely pay final wages to
14 Aggrieved Employees. DEFENDANTS provide final wages to Aggrieved Employees on the
15 regular pay day without regard to the timing requirements of Labor Code sections 201-202.
16 Moreover, final paychecks, once provided, do not include all wages owed as they are devoid of,
17 including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation
18 pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

19 155. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
20 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
21 256.

Unlawful Agreements/ Unlawful Criminal and Financial Background Checks:

22 156. The California Labor Code places certain procedural and substantive limits on
23

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

11 157. Based on information and belief, DEFENDANTS ordered unlawful financial credit
12 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required
13 Aggrieved Employees to provide ongoing written consent to the unlawful credit checks as a
14 condition of employment, in violation of California and Federal law, which results in a further
15 violation of Labor Code section 432.5.

16 158. Based on information and belief, DEFENDANTS required Aggrieved Employees to
17 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
18 obtaining and/or holding employment in violation of the ICRAA and the FCRA.

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

1 employment.

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

5 161. By requiring that PLAINTIFF and other Aggrieved Employees sign off on the illegal
6 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5 (stating
7 that “no employer...shall require any employee or applicant for employment to agree, in writing,
8 to any term or condition which is known by such employer...to be prohibited by law.”).

9 Unlawful Inquires into Criminal History

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

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

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

165. As such, PLAINTIFF and Aggrieved Employees continue to be subject to various

1 unlawful provisions as a condition of employment.

2 166. Under the provisions of PAGA and the above mentioned Labor Code sections,
3 including but not limited to Labor Code sections 201, 202, 203, 210, 225.5, 226, 226.3, 226.7, 245,
4 247.5, 248, 248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1197, 1197.1, 1198,
5 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all interpretations of
6 these laws by California Courts and administrative bodies, as well as any other law that is
7 enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 8 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
9 relevant California Labor Code provisions listed herein only if permitted by the
10 PAGA statute, pursuant to Labor Code section 2699(a); and
11 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
12 violations without a civil penalty recoverable under the PAGA, all in the default
13 amounts provided by Labor Code section 2699(f).
14 c. The proper measure of penalties under PAGA is the number of violations,
15 whether those violations were committed as against Plaintiff or any Aggrieved
16 Employee, whether a party to this action or not.

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of herself,
20 the State of California, and the Aggrieved Employees:

- 21 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
22 25% payable to Aggrieved Employees);
23 2. For reasonable attorney's fees and costs of suit; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

3. For such other and further relief that the Court deems just and proper.

Dated: March 4, 2022

CROSNER LEGAL, P.C.



Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Blake R. Jones, Esq.
Attorneys for Plaintiff,
ZAFIRO MARTINEZ

EXHIBIT

1



Zachary Crosner, Esq.
Managing Attorney
Los Angeles Office
9440 Santa Monica Blvd.,
Ste. 301
Beverly Hills, CA 90210

zach@crosnerlegal.com
office: (310) 496-5818
fax: (310) 510-6429

December 22, 2021

VIA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Cal Pop Group, Inc.
Attn: Shahraz Danesh,
Agent for Service of Process
26996 La Paz Road
Aliso Viejo, CA 92656

Cal Pop Group, Inc.
Attn: Legal Department
8016 Louise Avenue
Northridge, CA 91325

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
Cal Pop Group, Inc.
Date: December 22, 2021
Subject: *Zafiro Martinez v. Cal Pop Group, Inc. d/b/a Popeye's Louisiana Kitchen*

Introduction

This office represents COMPLAINANT, Zafiro Martinez (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 entities and individual managing agents of said entity: Cal Pop Group, Inc., (hereinafter, these entities and its managing agents are referred to collectively 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 current and former non-exempt employees employed by EMPLOYER within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”), and on behalf of all current and former exempt employees employed by EMPLOYER within one year of the date of this notice (“EXEMPT 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 certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State, and/or the entity and/or mailing address as provided to the California Secretary of State, and/or the address listed on COMPLAINANT’s wage statements.

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, 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. For violations that are curable under § 2699.3© and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3©, 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. For all other violations that are not curable, an action pursuant to 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

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 201-203, 204, 216, 221-223, 226,

226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

**The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT
AGGRIEVED EMPLOYEES AND EXEMPT 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 is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT is informed and 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 and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT

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, 1194 and 2802 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

Cal Pop Group, Inc., owns, operates, or otherwise manages Popeye's Louisiana Kitchen restaurant franchise(s). At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER, at EMPLOYER's Popeye's Louisiana Kitchen California, in various positions including but not limited to an assistant manager and general manager, from in or about December 2019 until COMPLAINANT's last day worked in or about early August 2021. COMPLAINANT regularly worked at EMPLOYER's restaurant in Mission Viejo, California but was sometimes asked to work at other restaurants operated by EMPLOYER, including but not limited to a restaurant in Artesia, California. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES typically worked at least eight (8) hours per day, five (5) days per week. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES worked in various positions, including but not limited to cashiers, cooks, prep, managers, supervisors, and/or restaurant staff.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES

for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wages for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the employee's regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal background criminal and/or financial checks as a condition of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT EMPLOYEES' hire or maintaining their employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer or employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES, and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; 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 NON-EXEMPT AGGRIEVED EMPLOYEES. The applicable IWC Wage Order, including but not limited to Wage Order 4-2001 and 5-2001, 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 failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other

NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's time rounding, automatic meal break deductions, and practices, and other off-the-clock work policies and practices described below.

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 NON-EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

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

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 4-2001 and 5-2001, 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), section 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

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

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. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 4-2001 and 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 five (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 applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and/or work through part or all their meal periods due to the nature and constraints of their job duties, lack of relief workers available, requirement to stay on premises, and/or commentary from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working due to understaffing, lack of coverage, and/or lack of relief workers. NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut short due to their need to assist customers and/or cook or prep food for customers. For example, COMPLAINANT’s shift regularly started at 7:00 am or 8:00 am, but was often unable to take a thirty-minute meal break until after the end of the fifth hour of work due to customer rush hour between the hours of 11:00 am and 2:00 pm and consistent under staffing. Moreover, COMPLAINANT was regularly required to work the cash register due to understaffing and/or because she was the only available staff member able to speak English. As a result, she was unable to take a meal break until after her fifth hour of work or not at all, due to the nature and constraints of her job duties, lack of relief workers, and/or commentary from supervisors. However, COMPLAINANT was required to clock out for meal periods before the end of the fifth hour even when no such meal period was provided in order to avoid disciplinary action

or warnings. Other NON-EXEMPT AGGRIEVED EMPLOYEES were also unable to take timely thirty-minute meal periods due to the nature of their job, workload, and lack of relief workers.

Despite failing to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for these missed/unlawful meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive compliant meal periods.

Based on information and belief, EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks. For example, at times, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, clocked out for a meal break, but continued assisting customers or tending to other work-related tasks.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER also failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal period start and end times. Based on further information and belief, EMPLOYER illegally rounded the start and end times of employee meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on further 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 and/or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a second meal period despite COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES consistently working over ten hours in a workday and thus being entitled to a second duty-free, uninterrupted, thirty-minute meal period before the

end of the tenth hour of work. Per EMPLOYER's unlawful meal period policies and practices, EMPLOYER only provided a single meal period per shift, regardless of the number of hours worked, and that single meal period was non-compliant. For example, COMPLAINANT regularly worked over ten hours per day, but was not afforded a second uninterrupted (30) minute meal period.

Upon information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a proper meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

EMPLOYER was informed of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' inability to take compliant meal periods due to their need to tend to customer, assist in the kitchen, and/or complete other job duties, and lack of relief workers available because COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES so informed EMPLOYER. EMPLOYER failed to take any action to remedy the situation in order to allow COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to take compliant, non-interrupted meal periods. EMPLOYER failed to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for meal periods and failed to maintain accurate record of non-compliant meal periods taken by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. Instead, EMPLOYER regularly recorded COMPLAINANT's meal breaks as if they were timely taken, even though a meal period was not actually afforded at this time and/or were otherwise not in accordance with California law.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, IWC Wage Order No. 4-2001 and 5-2001, section 11(A), (B) 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.

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 4-2001, section 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").

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 No. 4-2001 and 5-2001, section 12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shift more than 6 hours up to 10 hours, and three 10-minute rest periods for shift of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. 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; IWC Wage Order No. 4-2001 and 5-2001, 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 workday that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with lawful rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

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

Any purported rest periods would be interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints of COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, need to assist customers, understaffing, and/or commentary from supervisors pressuring them to skip rest breaks completely or take non-compliant rest breaks. COMPLAINANT and similarly AGGRIEVED EMPLOYEES were also required to be able to work during the restaurant's busy hours as a "all hands-on deck" approach was expected by EMPLOYER.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once jobs were completed/as time permitted.

EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest breaks.

EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. Furthermore, EMPLOYER failed to pay a rest period premium for each missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 4-2001 and 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section §§ 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.³

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

EMPLOYER’s restaurants/locations are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. EMPLOYER could have provided COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within the restaurant with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the restaurant wall, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

EMPLOYER did not provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. For example, COMPLAINANT and other NON-EXEMPT AGGRIEVED

³ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 4-2001, section 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”).

EMPLOYEES were not allowed to sit in the restaurant at all during working hours, nor were they provided with a break room. Moreover, EMPLOYER did not inform COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to suitable resting facilities under California law.

EMPLOYER's failure to provide suitable resting facilities to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, including but not limited to IWC Wage Order 4-2001 and 5-2001, section 13(B) and the California Labor Code, including but not limited to section 1198.

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 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 NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deductions and time rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated pre-shift/post shift/ and/or other off-the-clock work policies and/or practices 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 NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced to work through part or all their meal periods due to understaffing, lack of relieve workers, the nature and constraints of their job duties and/or commentary from supervisors pressuring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to take non-compliant breaks or skip breaks completely.

EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for meal periods and/or requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for at least thirty minutes per shift for meal periods,

despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked.

COMPLAINANT alleges on information and belief that EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and or forty hours in a week.

Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform pre-shift and post-shift off-the-clock work. For example, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to perform a Covid-related temperature check and answer Covid-screening questions prior to clocking in for their shifts, which took at least 5 minutes each workday. None of this pre-shift work time was recorded nor compensated by EMPLOYER, resulting in daily off-the-clock work for NON-EXEMPT AGGRIEVED EMPLOYEES and thus the underpayment of minimum wages and overtime wages owed as well as record-keeping violations. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for this and other off-the-clock work, which resulted in the underpayment of minimum wages and overtime wages owed as well as record-keeping violations.

Based on further information and belief, EMPLOYER required/requires COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to undergo Covid testing outside of their scheduled shift times without compensating COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time to/from the testing sites, time spent waiting for the tests to be performed, and time spent undergoing testing, resulting in significant off-the-clock work. This regular performance of off-the-clock work resulted in EMPLOYER underpaying minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to perform pre-shift and post shift off-the-clock work when opening or closing a store. For example, when COMPLAINANT opened the store, she was required to unlock the door and disable the alarm before clocking-in to work which resulted in at least a few minutes of off-the-clock work. Similarly, when closing the store, COMPLAINANT was required to first clock-out then enable

the alarm, and then close all doors. This amounted to at least an additional few minutes of post-shift off-the-clock work.

Additionally, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to pick up their paychecks at the restaurant they regularly worked at. On pay days, NON-EXEMPT AGGRIEVED EMPLOYEES were required to travel to and from their assigned restaurant in order to pick up their bi-weekly paycheck. This work time was off-the-clock. As such, NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for the cost of traveling to and from EMPLOYER's restaurant nor were they compensated for time spent obtaining/collecting his or her paycheck.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices and failure to provide off-duty meal periods and other mandated off-the-clock work described above resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT 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 4-2001 and 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

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; IWC Wage Order 4-2001 and Wage Order 5-2001, (and 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 NON-EXEMPT 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 for meal periods, start shift times and end times, and mandated pre-shift and post shift off-the-clock work, and other off-the-clock work described above resulted in the failure to account for all hours worked

⁴ See Lab. Code section 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, section 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").

and thus the denial of minimum wages as well as overtime wages to COMPLAINANT and NON-EXEMPT 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 and continues to fail to pay any premium wage rate for hours worked beyond eight (8) hours in a day or beyond forty hours in a week.

Based on information and belief, EMPLOYER failed to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular pay rate(s) of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on further information and belief, EMPLOYER failed to properly blend multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 4-2001 and 5-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and the applicable Wage Order, including but not limited to Wage Order 4-2001 and 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.⁵

Violation of California Labor Code Sections 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/

⁵ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code section 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order, section 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”).

automatic deduction policies and practices for meal periods and shift start and end times/ or other required off-the-clock work described herein) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary shift differential pay and bonuses (such as, but not limited to, performance bonuses/bonuses for meeting quotas), and/or other non-discretionary compensation into the sick leave pay rate calculation.

EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

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 NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

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

But for this failure, COMPLAINANT and all NON-EXEMPT 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 COMPLAINANT and all NON-EXEMPT 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 COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the 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 also unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

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, COMPLAINANT and other NON-EXEMPT 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 NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT 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

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).

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. section 226.

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES failed to among other things, indicate earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by the COMPLAINANT and all NON-EXEMPT 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*) which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Employer's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

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

Based on information and belief, EMPLOYER's wage statements further violate Labor Code section 226(a), by among other things, failing to list the correct name and address of the legal entity that is the employer.

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

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

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by failing to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER

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

to civil penalties under Labor Code § 210. Each violation results in a separate civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

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

IWC Wage Order 4-2001 and 5-2001 (and all applicable IWC Wage Orders), Section 14(A-B) provides:

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

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

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

EMPLOYER failed to provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, the nature of the work reasonably permitted the use of seats for at least part of the time that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were working. Tasks including but not limited to operating the point-of-sale system, handing a receipt and change to customers, greeting customers, providing customer service, waiting for food to be prepped, taking orders, handing orders to customers, and/or waiting for the next customer can all be performed while seated. Moreover, the physical configuration of the workspace behind the front-end check stand can accommodate one or more seats, and such suitable seats exist. For example, a lean stool could fit behind the front-end check stand and be safely used while taking orders (either in-store orders or drive-through orders), and/or while checking out customers. Lastly, there were periods of time when COMPLAINANT and the NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

COMPLAINANT and the other NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and the other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to COMPLAINANT and the other NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of IWC Wage Order 4-2001 and

5-2001 (and all applicable wage orders), section 14 (A-B) and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each aggrieved employee, results in a separate civil penalty.⁸

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 NON-EXEMPT AGGRIEVED EMPLOYEES minimum wage and overtime compensation 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 NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all NON-EXEMPT 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. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." 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*

⁸ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Transportation Los Angeles, LLC, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES on the regular pay day without regard to the timing requirements of Labor Code sections 201-202. For example, COMPLAINANT's personnel file lists August 6, 2021, as the date of resignation and last date worked. Yet, COMPLAINANT's final wage statement provided by EMPLOYER is dated August 12, 2021, well over three days from the date of resignation.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 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.⁹

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 § 2802(a) and all applicable Wage Orders, § 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, § 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.

⁹ (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").

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 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ mobile phone and data usage, as well as costs associated with the purchase and or maintenance of uniforms/clothing/ and/or vehicle-related expenses incurred on the job.

For example, COMPLAINANT was required to use her personal phone to respond to work-related inquiries from coworkers and/or supervisors. Moreover, COMPLAINANT was not reimbursed for the use of her personal vehicle when required to travel from one of EMPLOYER’s restaurants/locations to another. Moreover, every day (except Sundays) EMPLOYER required that COMPLAINANT or another NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE drive his or her own vehicle to the bank to make deposits for their assigned restaurant. COMPLAINANT regularly drove to the bank in her personal vehicle to make such deposits. Sometimes, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were tasked with driving their personal vehicle to make the daily deposit. EMPLOYER did not reimburse COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for mileage, and/or the use of his or her personal vehicle.

EMPLOYER also required COVID testing. EMPLOYER did not compensate COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES for the cost of traveling and/or using a personal vehicle to and from a testing site.

On pay days, EMPLOYER required COMPLAINANT to clock into COMPLAINANT’s regularly assigned store, then drive to a different facility operated by EMPLOYER to pick up paychecks for other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES and then return to COMPLAINANT’s regularly assigned restaurant to distribute the paychecks. COMPLAINANT was not reimbursed for the use of her personal vehicle when commuting from one of EMPLOYER’s locations to another. Similarly, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the use of

their personal vehicle and/or mileage used to drive to and from their regularly assigned restaurant to pick up their paycheck on pay days.

As such, EMPLOYER failed and continues to fail to compensate for vehicle-related expenses at the Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period.

EMPLOYER also failed to reimburse COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for the costs associated with the purchase and/or maintenance of uniforms including but not limited to work clothing, shirts with EMPLOYER's logo, visors, and/or aprons.

Upon information and belief, EMPLOYER also failed to reimburse COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for bank fees they were charged when EMPLOYER provided them with paychecks from an account that did not maintain sufficient funds, which resulted in a bounced check.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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 incurred as a result of being required to use their personal cell phones/other mobile communication devices on the job, vehicle use and mileage, and costs associated with the purchase and maintenance of work uniforms/clothing.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal and Financial Background Checks:

Unlawful Financial and Criminal Background Checks:

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). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 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, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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., including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER also violated Labor Code section 432.5.

Based on further information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in

a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

By having NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES sign off on the illegal background and financial checks, EMPLOYER also violated Labor Code section 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.”).

Unlawful Inquires into Criminal History

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. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, and the applicable Wage Order (including but not limited to Wage Order 4), 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 NON-EXEMPT AGGRIEVED

EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

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), 2699.3(c), 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 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT 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-five 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:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC