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 8

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

12 KAILEE WHITTAKER, on behalf of
 herself, the State of California, and others
 13 similarly situated and aggrieved,

14 Plaintiff,
 15

16 v.

17 YHB LONG BEACH LLC, a California
 limited liability company; L.A.
 18 KOREANA, INC., a California
 corporation; and DOES 1-100, inclusive,
 19

20 Defendants.
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Case No.: **22ST CV 34593**

CLASS ACTION COMPLAINT FOR:

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Violations of Labor Code Section 226**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition and**
9. **Violation of Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff, KAILEE WHITTAKER (“PLAINTIFF”), on behalf of herself, the State of
2 California, other similarly situated Class Members (defined below) and Aggrieved Employees
3 (defined below), hereby files this Complaint against Defendants YHB LONG BEACH LLC, a
4 California limited liability company; L.A. KOREANA, INC., a California corporation, and DOES
5 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed
6 and believes and thereon alleges as follows:

7 **JURISDICTION AND VENUE**

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

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California who worked as a full-time non-exempt employee
17 for DEFENDANTS in the State of California.

18 3. PLAINTIFF worked for DEFENDANTS, from in or about September 2020, through
19 in or about January 2021. PLAINTIFF worked for DEFENDANTS during the relevant period as a
20 non-exempt Front Desk Agent and/or or other similar title(s) at one of DEFENDANTS’ California
21 hotel locations located in Long Beach, California.

22 4. DEFENDANTS are each either a California limited liability company and/or
23 California corporation, that at all relevant times, were authorized to do business within the State of
24 California and are doing business in the State of California. DEFENDANTS are in the hotel /
25 hospitality services business. DEFENDANTS own, manage, and/or operate several locations,
26 including but not limited to, hotels operating in the following cities in California: Long Beach, San
27 Francisco, and American Canyon, California. During the relevant period, DEFENDANTS assigned
28 PLAINTIFF to work at DEFENDANTS’ hotel facility located at 2640 N Lakewood Blvd Long

1 Beach, CA 90815, which operated/operates under the name Holiday Inn – Long Beach Airport.

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

8 6. PLAINTIFF is further informed and believes that, at all relevant times, each
9 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
10 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
11 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
12 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
13 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
14 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
15 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
16 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
17 controlled, aided and abetted the conduct of all other Defendants.

18 **JOINT LIABILITY**

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

1 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
2 California, applying a less stringent standard to what constitutes sufficient control by a business
3 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
4 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
5 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
6 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
7 employment,” *Id.* at 875 [emphasis added].

8 8. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class
9 Members and the Aggrieved Employees were jointly employed by DEFENDANTS for purposes of
10 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
11 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
12 over wages, hours and working conditions of PLAINTIFF, Class Members, and Aggrieved
13 Employees; (2) suffered or permitted PLAINTIFF, Class Members and Aggrieved Employees to
14 work for them; and, (3) engaged PLAINTIFF, Class Members and Aggrieved Employees to work
15 for them.

16 9. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
17 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
18 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
19 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
20 Employees to these same policies and practices regardless of the location(s) or facilities where they
21 worked.

22 10. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
23 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
24 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
25 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
26 Members’ and Aggrieved Employees’ wages, hours and working conditions, and/or suffered or
27 permitted PLAINTIFF, Class Members, and Aggrieved Employees to work so as to be considered
28 the joint employers of PLAINTIFF, Class Members, and Aggrieved Employees. For example,

1 DEFENDANTS, and each of them, maintain the same principal office (4353 E. Willow Street, Long
2 Beach, California 90815) and/or same California registered Agent for Service of Process.

3 11. As such, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies,
4 practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices,
5 meal and rest periods, reimbursement of business expenses and other working conditions that were
6 distributed to, and/or applied to PLAINTIFF and the Class Members and Aggrieved Employees,
7 and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF
8 and the Class Members and Aggrieved Employees in a uniform manner. DEFENDANTS
9 collectively represented to PLAINTIFF, Class Members, and Aggrieved Employees that each was
10 an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained the right
11 to terminate PLAINTIFF's, Class Members' and Aggrieved Employees' employment with or
12 without cause. Upon information and belief, DEFENDANTS further collectively represented to
13 PLAINTIFF, Class Members, and Aggrieved Employees in writing the details of their
14 compensation, and the manner in which they were to take meal and rest periods, the procedures
15 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
16 to PLAINTIFF, Class Members, and Aggrieved Employees by which DEFENDANTS collectively
17 would evaluate the wage rates of PLAINTIFF, Class Members, and Aggrieved Employees.

18 12. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
19 and working conditions of PLAINTIFF, Class Members, and Aggrieved Employees. As such,
20 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
21 the Class Members' and Aggrieved Employees' employment, including the instrumentality that
22 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

23 13. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
24 control over, applied the same policies and practices, and engaged in the same acts and omissions
25 with regard to the other Class Members and Aggrieved Employees.

26 **CLASS ALLEGATIONS**

27 14. PLAINTIFF brings this action on behalf of herself, and all others similarly situated
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1 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
2 represent are defined as follows and referred to as the “Class” or “Class Members”:

3 All current and former non-exempt employees that worked either
4 directly or via a staffing agency for DEFENDANTS at any one or
5 more locations owned, operated, and/or managed by DEFENDANTS
6 in California at any time within the four years and 178 days prior to
7 the filing of the initial Complaint (“Class Period”).¹

- 8 a. Numerosity. While the exact number of Class Members is unknown to
9 PLAINTIFF at this time, the class is so numerous that the individual joinder of
10 all members is impractical under the circumstances of this case. PLAINTIFF is
11 informed and believes the class consists of at least 100 individuals.
- 12 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
13 because common questions of law and fact predominate over individual issues.
14 Common questions include, but are not limited to, the following: (1) whether
15 DEFENDANTS understated hours worked and failed to pay all amounts due to
16 PLAINTIFF and the Class Members for wages earned, including minimum and
17 overtime wages, under California law; (2) whether DEFENDANTS provided
18 PLAINTIFF and the Class Members with all meal periods or premium payments
19 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
20 provided PLAINTIFF and the Class Members with all rest periods or premium
21 payments in lieu thereof, in compliance with California law; (4) whether
22 DEFENDANTS provided PLAINTIFF and the Class Members with accurate,
23 itemized wage statements in compliance with California law, displaying,
24 including but not limited to, the total hours worked during the pay period and
25 the correct name and/or address of the legal entity that is the employer; (5)

26
27 ¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a)
28 (California Rules of Court), whereby “statutes of limitations and repose for civil causes of action that exceed 180 days
are tolled from April 6, 2020 to October 1, 2020.”

1 whether DEFENDANTS failed to produce and/or allow access to employment
2 records within the time limits prescribed under California law; (6) whether
3 DEFENDANTS timely paid PLAINTIFF and the Class Members all wages due
4 upon separation of employment; (7) whether DEFENDANTS failed to
5 reimburse PLAINTIFF and the Class Members for all business expenses; and
6 (8) whether DEFENDANTS violated California Business and Professions Code
7 sections 17200, *et seq.*

- 8 c. Ascertainable Class. The proposed class is ascertainable as its members can be
9 identified and located using information in DEFENDANTS' business, payroll
10 and personnel records.
- 11 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
12 PLAINTIFF suffered a similar injury as the other Class Members as a result of
13 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
14 and pay all owed minimum and overtime wages, failure to provide proper meal
15 and rest periods or premium compensation in lieu thereof, failure to provide
16 accurate wage statements, failure to timely produce employment records, failure
17 to reimburse business expenses, and failure to pay all wages due upon separation
18 of employment.
- 19 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
20 Class Members. PLAINTIFF has no interests adverse to the interests of the other
21 Class Members. Counsel who represent PLAINTIFF are competent and
22 experienced in litigating similar class action cases and are California lawyers in
23 good standing. Counsel for PLAINTIFF have the experience and resources to
24 vigorously prosecute this case.
- 25 f. Superiority. A class action is superior to other available means for the fair and
26 efficient adjudication of this controversy since individual joinder of all members
27 of the class is impractical. Class action treatment will permit a large number of
28 similarly situated persons to prosecute their common claims in a single forum

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

14 **FACTUAL AND LEGAL ALLEGATIONS**

15 15. During the four-year period preceding filing of this complaint, PLAINTIFF, and each
16 of the Class Members, were employed by DEFENDANTS in the State of California as non-exempt,
17 employees. During the PAGA Period (defined below) PLAINTIFF and the Aggrieved Employees
18 (defined below) were employed by DEFENDANTS in the State of California as non-exempt
19 employees. At all times referenced herein, DEFENDANTS exercised control over PLAINTIFF,
20 Class Members, and Aggrieved Employees and suffered and/or permitted them to work.

21 16. PLAINTIFF worked for DEFENDANTS, from in or about September 2020 through
22 in or about January 2021. PLAINTIFF continued to be subject to DEFENDANTS' violations of one
23 or more labor code provisions through the end of 2021 and early 2022. PLAINTIFF worked for
24 DEFENDANTS during the relevant period as a non-exempt Front Desk Agent or other similar title
25 at one of DEFENDANTS' hotels located in Long Beach, California. PLAINTIFF's job duties
26 included but were not limited to, performing all check-in and check-out tasks, monitoring/managing
27 online and or phone reservations, and responding to guest inquiries and offering guest support
28 service. PLAINTIFF was typically scheduled to work at least eight (8)-hours per day, at least five

1 (5) days per week.

2 17. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
3 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
4 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF
5 and Class Members and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
6 automatic deduction and time rounding policies, and failure to relieve employees of all
7 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
8 improper meal periods, as explained below.

9 18. Based on information and belief, DEFENDANTS implemented a policy and/or
10 practice of rounding meal period start and end times and/or automatically deducting at least thirty
11 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
12 PLAINTIFF and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
13 control during purported meal periods and/or were otherwise not afforded lawful meal periods,
14 depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed.

15 19. Based on information and belief, Class Members and Aggrieved Employees were
16 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to
17 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
18 and/or practices. For example, DEFENDANTS mandated pre-shift and/or post-shift off-the-clock
19 work that was neither recorded nor compensated, which included without limitation, requiring Class
20 Members and Aggrieved Employees to bestow their personal items and/or change into their work
21 uniforms/work clothing/shoes/face masks prior to clocking in for their shifts, requiring Class
22 Members and Aggrieved Employees to respond to work-related calls/messages on their cell
23 phones/mobile devices before clocking in for their shifts and/or after clocking out for their shifts,
24 and/or complete other mandated off-the-clock work tasks prior to clocking in for the start of their
25 shifts and/or after clocking out for the end of their shifts. For example, upon arriving at work,
26 PLAINTIFF was required to first bestow her personal items in the employee storage area prior to
27 clocking in for the start of her shift and regularly had to respond to work-related calls/messages to
28 her personal cell phone from her supervisor before clocking in for the start of her shifts and/or after

1 clocking out for the end of her shifts. This pre-shift and post-shift time spent under DEFENDANTS'
2 control was not recorded and not compensated, resulting in the significant underpayment of
3 minimum and overtime wages owed to PLAINTIFF.

4 20. Based on information and belief, DEFENDANTS failed to pay Class Members and
5 Aggrieved Employees for time they were required to spend completing orientation, policy
6 questionnaires, and/or time spent completing the onboarding process including but not limited to
7 reviewing various documents and policies provided by DEFEDANTS. Based on information and
8 belief, this work time was completed off-the-clock and was not compensated.

9 21. As explained above, Class Members and Aggrieved Employees were also required
10 to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
11 messages they received outside of their scheduled shift times to their personal phones/mobile
12 devices and were required to respond to, including but not limited to, communications from
13 customers/hotel guests and/or supervisors, resulting in significant off-the-clock work.

14 22. Moreover, based on information and belief, DEFENDANTS' employee
15 electronic/biometric time-keeping system consistently malfunctioned such that PLAINTIFF and
16 other Class Members were consistently required to either reinitiate and/or otherwise troubleshoot
17 the system prior to being able to clock in and/or were unable to clock in at all for the start of their
18 shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment
19 of minimum and overtime wages owed to PLAINTIFF and other Class Members. This time spent
20 under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
21 minimum and overtime wages.

22 23. Based on further information and belief, DEFENDANTS implemented a time-
23 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
24 Aggrieved Employees of compensable time because the time-rounding system implemented by
25 DEFENDANTS would almost always, if not always, result in understating actual compensable work
26 time.

27 24. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
28 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal

1 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
2 minimum wages owed to PLAINTIFF and Class Members and Aggrieved Employees as well as
3 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than
4 eight (8) hours in a day and/or more than forty (40) hours in a week.

5 25. Based on information and belief, DEFENDANTS had actual and/or constructive
6 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
7 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
8 underpayment of minimum wages owed to PLAINTIFF and other Class Members and Aggrieved
9 Employees, in violation of California's minimum and overtime wage laws.

10 26. Based on information and belief, DEFENDANTS failed and continue to fail to pay
11 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
12 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
13 consecutive day of work in a work week, in violation of California's overtime laws.

14 27. Based on information and belief, DEFENDANTS failed to incorporate all non-
15 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
16 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
17 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
18 Class Members and Aggrieved Employees.

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

1 need to respond to guest inquiries/provide guest support services and/or communicate with hotel
2 staff members. Based on information and belief, Class Members and Aggrieved Employees were
3 instructed by their supervisors to clock out for meal breaks but to continue attending to guests as
4 needed and/or complete other work tasks during their unpaid meal breaks.

5 29. Based on information and belief, other Class Members and Aggrieved Employees
6 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
7 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
8 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
9 duties, and/or the need to meet DEFENDANTS' goals and expectations.

10 30. Based on information and belief, DEFENDANTS implemented policies and/or
11 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
12 DEFENDANTS' control during unpaid meal periods. Class Members and Aggrieved Employees
13 were required to remain tethered to their work sites and or work communication devices during
14 purportedly off-duty meal periods. For example, Class Members and Aggrieved Employees
15 received calls/texts from guests and or their supervisors and/or were required to respond to guest
16 inquiries and/or complete other work tasks while clocked out for their meal periods.

17 31. Based on information and belief, DEFENDANTS required Class Members and
18 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
19 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
20 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
21 unaccounted pre-shift off-the-clock work.

22 32. Based on information and belief, despite DEFENDANTS' failure to provide lawful
23 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
24 times of PLAINTIFF's and other Class Members' and Aggrieved Employees' meal periods and/or
25 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
26 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
27 Members and Aggrieved Employees did not receive lawful meal periods.

28 33. Moreover, based on information and belief, per DEFENDANTS' uniform policy and

1 practice, Class Members and Aggrieved Employees who worked shifts of more than ten hours did
2 not receive a second legally compliant thirty (30) minute second meal period.

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

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

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

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

26 38. **Rest Periods Violations.** DEFENDANTS did not properly authorize and provide
27 PLAINTIFF and other Class Members and Aggrieved Employees with legally compliant rest
28 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,

1 are provided in the middle of the work period, as required by law.

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

6 40. Based on information and belief, DEFENDANTS did not have a have a compliant
7 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
8 practice. Based on information and belief, DEFENDANTS had no policy in place nor instruction as
9 to the taking, timing, or duty-free nature of rest periods. Any purported rest periods were interrupted,
10 cut short, on duty, restricted to premises, and/or late due to the nature and constraints of
11 PLAINTIFF's, Class Members' and other Aggrieved Employees' job duties and/or commentary
12 from supervisors pressuring them to skip rest periods completely or take non-compliant rest periods.
13 For example, based on information and belief PLAINTIFF and other Class Members and Aggrieved
14 Employees were required to be on call in order to tend to the needs of guests and/or compete other
15 job duties, such that rest breaks were only taken once jobs were completed/if time permitted. Based
16 on information and belief, PLAINTIFF and other Class Members and Aggrieved Employees
17 received work related calls and messages throughout the day, including but not limited to during
18 purported rest periods. As such, Class Members and Aggrieved Employees were afforded an
19 opportunity to take lawful rest periods. Based on information and belief, DEFENDANTS failed to
20 provide Class Members and Aggrieved Employees with lawful rest periods.

21 41. Based on information and belief, Class Members' and Aggrieved Employees' rest
22 periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing,
23 the nature and constraints of their job duties, and/or due to commentary from supervisors/managers
24 pressuring them to skip rest periods completely or otherwise take non-compliant rest periods.

25 42. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
26 lasting longer than ten hours. For example, based on information and belief, when Class Members
27 and Aggrieved Employees worked shifts lasting longer than ten hours, Class Members and
28 Aggrieved Employees were not afforded the opportunity and/or was not permitted to take a third

1 ten-minute rest period.

2 43. Based on information and belief, DEFENDANTS implemented policies and/or
3 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
4 all duties and DEFENDANTS' control during rest periods. Based on information and belief,
5 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to remain
6 tethered to their work sites and work communication devices during any rest periods;
7 DEFENDANTS prohibited PLAINTIFF and other Class Members and Aggrieved Employees from
8 leaving the work premises during any rest periods; DEFENDANTS required PLAINTIFF and other
9 Class Members and Aggrieved Employees to monitor their cell phones and or work communication
10 devices for work communications during any rest periods, rendering those rest periods on duty and
11 thus noncompliant with California law.

12 44. Based on information and belief, Class Members and Aggrieved Employees were
13 pressured to complete their work duties according to a designated schedule such that rest periods
14 were only taken once tasks were completed, and/or as time permitted.

15 45. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
16 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
17 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
18 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
19 period premium for failure to incorporate all non-discretionary remuneration, including but not
20 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
21 regular rate of compensation for purposes of calculating the owed rest period premium.

22 46. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
23 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
24 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
25 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
26 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
27 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
28 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee.

3 47. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
4 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
5 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
6 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
7 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
8 of all duties and employer control during unpaid meal periods, payment according to scheduled
9 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
10 practices) which results in a violation of Labor Code section 226(a).

11 48. As described herein, based on information and belief, DEFENDANTS also failed to
12 incorporate all forms of non-discretionary compensation earned during the pay period into the
13 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
14 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

15 49. Moreover, based on information and belief, DEFENDANTS issued wage statements
16 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
17 section 226(a), by among other things, failing to list the correct name and/or address of the legal
18 entity that is the employer.

19 50. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
20 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
21 required information. As such, DEFENDANTS violated Labor Code section 226.

22 51. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
23 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
24 Employees all wages that were due and owing upon termination or resignation. Based on
25 information and belief, DEFENDANTS untimely provide final wages to Class Members and
26 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

27 52. Upon separation of employment, Class Members and Aggrieved Employees' final
28 paychecks were not timely provided and/or were not timely provided with all owed vacation pay

1 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
2 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
3 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
4 sick leave and/or paid time off wages at the properly accrued rates.

5 53. These violations subject DEFENDANTS to civil penalties under Labor Code section
6 203, 210, and/or 256.

7 54. **Unreimbursed Business Expenses.** Based on information and belief,
8 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
9 business expenses as a direct consequence of the performance of their job duties without providing
10 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
11 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
12 and maintain work tools that are supposed to be the responsibility of the employer.

13 55. Based on information and belief, DEFENDANTS shifted the costs of doing business
14 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
15 including but not limited to, uniforms and/or the use of Class Members and Aggrieved Employees'
16 personal mobile phone and data usage for work related purposes including but not limited to
17 receiving and responding to work related messages and/or phone calls. For example, PLAINTIFF
18 was regularly required to use her personal cellphone to text guest food orders to the kitchen and to
19 receive work-related calls/messages from her supervisor but was in no way reimbursed by
20 DEFENDANTS for this personal cell phone use.

21 56. Based on information and belief, DEFENDANTS improperly required Class
22 Members and Aggrieved Employees to pay for costs associated with the purchase and or
23 maintenance of uniforms/work clothing/shoes and /or safety equipment for work.

24 57. Based on information and belief, DEFENDANTS regularly failed to reimburse and
25 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
26 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
27 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
28 and/or carrying out the duties assigned by DEFENDANTS.

58. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with full reimbursement for all reasonable expenses associated with carrying out their duties required that Class Members and Aggrieved Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

59. **Failure to Produce Employment Records.** Based on information and belief, DEFENDANTS have a uniform policy and practice of failing to produce or make available a current or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on November 22, 2021, PLAINTIFF sent a written request for time, pay and personnel records to DEFENDANTS. After DEFENDANTS failed to respond within the statutory periods, PLAINTIFF sent a second written request on February 3, 2022. Yet, DEFENDANTS failed to produce any records at all within the time periods delineated by California labor law. To this day, DEFENDANTS have not produced PLAINTIFF's requested documents. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel records when requested by other Class Members and Aggrieved Employees.

60. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS engaged in these same herein described unlawful practices and that DEFENDANTS applied these same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

FIRST CAUSE OF ACTION

**Recovery of Unpaid Minimum Wages and Liquidated Damages
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

62. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

63. DEFENDANTS violated California's minimum wage laws by failing to compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,

1 DEFENDANTS' auto-deduction policy and practice for meal periods, paying for scheduled hours
2 instead of actual hours worked, off the-clock work, and rounded time entries.

3 64. DEFENDANTS had and continue to have a continuous policy of failing to pay
4 PLAINTIFF and Class Members for all hours worked.

5 65. Based on information and belief, DEFENDANTS had and continue to have a
6 continuous policy of rounding PLAINTIFF and Class Members time punches, including the start
7 and end of shift times, and meal period time punches. On information and belief, this policy favored
8 DEFENDANTS more often than not, resulting in significant uncompensated time worked by
9 PLAINTIFF and Class Members.

10 66. Based on information and belief, DEFENDANTS had and continue to have a
11 continuous policy of paying PLAINTIFF and Class Members for scheduled hours, rather than actual
12 hours worked.

13 67. Based on information and belief, DEFENDANTS had and continue to have a
14 continuous policy of requiring PLAINTIFF and the Class Members to perform work prior to
15 clocking in for their shifts and/or after clocking out for their shifts and/or outside of their scheduled
16 shift times and during uncompensated meal periods.

17 68. Based on information and belief, DEFENDANTS had actual or constructive
18 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
19 meal periods, failing to relieve employees of all duties and employer control during unpaid meal
20 periods, policy and practice of payment according to scheduled time rather than actual work time
21 resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class Members.

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

25
26 **SECOND CAUSE OF ACTION**

27 **Recovery of Unpaid Overtime Wages**
28 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

1 71. Employees in California must be paid overtime, equal to one and one-half times the
2 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
3 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
4 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
5 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
6 consecutive day of work in a workweek, unless they are exempt.

7 72. PLAINTIFF and the Class Members worked overtime hours for which they were not
8 compensated by DEFENDANTS by virtue of DEFENDANTS' auto-deduction for meal periods,
9 time-rounding policies for meal period start and end times and shift start and end times, off-the-
10 clock work policies and practices, and practice of only paying for scheduled hours instead of actual
11 hours worked (described above).

12 73. Based on information and belief, DEFENDANTS further violated California's
13 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
14 limited to, non-discretionary bonus compensation, shift differentials, multiple base rates of pay
15 and/or other non-discretionary compensation into the regular rate of pay used to calculate the
16 overtime rate of pay. Failing to include non-discretionary compensation in the regular rate of pay
17 resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime
18 wages owed to PLAINTIFF and the Class Members.

19 74. DEFENDANTS' conduct described above is in violation of California Labor Code
20 sections 510 and 1194 and all applicable Wage Orders.

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

THIRD CAUSE OF ACTION

Failure to Provide Meal Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)

25 76. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 77. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
27 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
28 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second

1 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
2 waived, but only under the following circumstances: (1) if an employee's total work period in a day
3 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
4 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
5 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
6 waived by mutual consent of the employer and employee, but only if the first meal period was not
7 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
8 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
9 done so. If the employer fails to properly record a valid meal period, it is presumed no meal period
10 was provided.

11 78. PLAINTIFF and the Class Members were consistently unable to take timely, off
12 duty, thirty-minute, uninterrupted first and second meal periods, often being forced to take late meal
13 periods, interrupted meal periods and/or work through part or all of their meal periods due to the
14 nature and constraints of their job duties, lack of relief workers, and/or commentary from
15 DEFENDANTS pressuring them to take non-compliant meal periods or skip meal periods
16 completely.

17 79. Based on information and belief, DEFENDANTS had and continue to have a
18 continuous policy of rounding the start and end times of employees' meal periods and/or
19 automatically deducting thirty minutes (or more) per shift despite having actual and/or constructive
20 knowledge that PLAINTIFF and Class Members did not receive compliant meal periods.

21 80. Moreover, Class Members did not receive a timely, uninterrupted second meal period
22 when working shifts over ten (10) hours in a workday.

23 81. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
24 periods in violation of California law or failed to pay the proper meal period premium for failure to
25 incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
26 differential pay and/or other non-discretionary compensation into the regular rate or compensation
27 for purposes of calculating the owed meal period premium.

28 82. DEFENDANTS failed to provide PLAINTIFF and the Class Members with all

1 required meal periods, or with proper compensation in lieu thereof. PLAINTIFF is informed and
2 believes and thereon alleges that DEFENDANTS had actual or constructive knowledge that its time-
3 rounding and auto-deduction policies and practices and policies, and practices that failed to relieve
4 PLAINTIFF and other Class Members of all duties and employer control during meal periods
5 resulted in the denial of compliant meal periods in violation of California's meal period laws.

6 83. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
7 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
8 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
9 all in an amount to be proved at trial.

10 **FOURTH CAUSE OF ACTION**
11 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

14 85. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
15 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
16 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
17 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
18 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
19 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
20 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
21 The rest period requirement obligates employers to permit and authorize employees to take off-duty
22 rest periods, meaning employers must relieve employees of all duties and relinquish control over
23 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. If
24 the employer fails to provide any required rest period, the employer must pay the employee one
25 hour of pay at the employee's regular rate of compensation for each workday the employer did not
26 provide at least one legally required rest period, pursuant to Labor Code section 226.7.

27 86. PLAINTIFF and the Class Members did not receive compliant, timely 10-minute rest
28 periods for every four (4) hours worked or major fraction thereof. Any purported rest periods were
interrupted, cut short, on duty, restricted to premises, and/or late. PLAINTIFF and the Class

1 Members were pressured to complete their work such that rest breaks were only taken once tasks
2 were completed/as time permitted.

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

9 88. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
10 hour of additional pay at the regular rate of compensation for each workday that a required rest
11 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
12 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
13 trial.

14 **FIFTH CAUSE OF ACTION**
15 **Violations of Labor Code Section 226**
16 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

1 91. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
2 meal and rest periods that complied with Labor Code section 226.7, the wage statements
3 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
4 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
5 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
6 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by the
8 employee, in violation of Labor Code section 226(a)(9).

9 92. Moreover, due to violations detailed above, including but not limited to,
10 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, and failure to
11 provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226
12 by willfully failing to furnish PLAINTIFF and other Class Members with accurate, itemized wage
13 statements that listed the earned gross and net wages earned and the correct applicable rates of pay
14 for all hours worked. Moreover, wage statements issued by DEFENDANTS failed to list the "total
15 hours worked" by PLAINTIFF and Class Members (by virtue of the automatic deduction for meal
16 periods, failure to relieve Class Members of all duties and employer control during unpaid meal
17 periods, payment according to scheduled hours worked rather than actual hours worked, and off-
18 the-clock work policies and practices, all described in greater detail *supra*), which results in a
19 violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives
20 rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*,
21 (2018) 22 Cal.App.5th 1308, 1337).

22 93. DEFENDANTS' failure to accurately list all hours worked on all wage statements
23 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
24 Members over whether they received all wages owed to them.

25 94. As a result, PLAINTIFF and other Class Members have suffered injury as they could
26 not easily determine whether they received all wages owed to them and whether they were paid for
27 all hours worked.

28 95. Separately, and independent of the above allegation, based on information and belief,

1 DEFENDANTS issued wage statements to PLAINTIFF and other Class Members that further
2 violate Labor Code section 226(a), by failing to list the correct name and/or address of the legal
3 entity that is the employer.

4 96. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and the
5 Class Members with accurate, itemized wage statements.

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

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

20 99. Pursuant to California Labor Code § 226(h), PLAINTIFF and the Class Members are
21 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
22 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
23 provide currently employed Class Members with inaccurate wage statements in violation of
24 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
25 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
26 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
27 with California Labor Code § 226(a).

28 100. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and the Class

1 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
2 attorneys' fees, and costs of suit.

3 **Failure to Produce Employment Records**

4 101. *Time and Pay Records.* Labor Code section 226(b)-(c) and all applicable IWC Wage
5 Orders, section 7 require that employers keep the following information on file for each employee
6 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
7 and the corresponding number of hours worked by the employee at each hourly rate, when the
8 employee begins and ends each work period (including meal periods) and split intervals; total hours
9 worked by the employee; all deductions; gross wages earned; and net wages earned.

10 102. Section (b) of Labor Code section 226 further requires employers to "afford current
11 and former employees the right to inspect or receive a copy of records pertaining to their
12 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
13 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
14 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
15 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
16 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
17 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
18 the employer. Lab. Code section 226(f).

19 103. *Personnel Records.* In addition to their right to time and pay records, employees, and
20 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
21 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
22 section 432 further specifies that employers must furnish copies of all employment records bearing
23 the employee's signature.

24 104. Labor Code section 1198.5 also requires that the file be made available for inspection
25 or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date
26 the employer receives a written request." An employer's failure to comply within this timeframe
27 likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty
28 from the employer. Lab. Code section 1198.5(k).

1 105. Based on information and belief, DEFENDANTS have a uniform policy and practice
2 of failing to produce or make available a current or former employee's personnel records and/or
3 payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the
4 applicable Wage Order. For example, PLAINTIFF sent a written request for time, pay and
5 personnel records to DEFENDANTS. Yet, DEFENDANTS failed to produce any records at all
6 within the time periods delineated by California labor law. Based on information and belief,
7 DEFENDANTS failed and continue to fail to timely produce complete time, pay and personnel
8 records when requested by other Class Members.

9 106. DEFENDANTS' conduct explained above is in violation of Labor Code Sections
10 226(b) & (c). Accordingly, PLAINTIFF and Class Members are therefore each entitled to recover
11 a \$750.00 penalty from DEFENDANTS, along with costs and reasonable attorneys' fees, pursuant
12 to Labor Code Section 226(f).

13 107. DEFENDANTS' conduct is also in violation of Labor Code section 1198.5. Pursuant
14 to Labor Code Sections Labor Code section 1198.5(k), PLAINTIFF and the Class Members are
15 entitled to recover an additional \$750.00 penalty from DEFENDANTS, along with injunctive relief,
16 costs and reasonable attorney's fees pursuant to Labor Code section 1198.5(l).

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 19 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

20 108. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

21 109. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
22 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
23 payable immediately.”

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

 111. Based in information and belief, DEFENDANTS fail to timely pay final wages to

1 Class Members upon separation of employment in violation of Labor Code section 201-202.
2 Moreover, final paychecks once provided to Class Members do not include all wages owed as they
3 are devoid of, including but not limited to, all owed minimum wages, overtime wages, premium
4 wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued
5 rates.

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

9 **SEVENTH CAUSE OF ACTION**
10 **Failure to Reimburse Business Expenses**
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

11 113. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

15 115. Among other things, under California law, when employees must use their personal
16 cellphones for work-related purposes, the employer must reimburse them for a reasonable
17 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
18 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
19 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
20 Id. 1144-1145. California law also requires employers to reimburse employees for automobile
21 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
22 and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

23 116. PLAINTIFF and the Class Members were improperly required to pay for business
24 expenses that are legally the responsibility of the employer, including but not limited to, cell
25 phone/data plan usage and charges, and/or costs associated with the purchase and/or maintenance
26 of uniforms.

27 117. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
28 reimbursement for all reasonable expenses associated with carrying out their duties required that

1 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
2 violation of Labor Code section 2802.

3 118. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
4 Members have suffered injury in that they were not completely reimbursed as mandated by
5 California law.

6 119. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
7 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
8 attorneys' fees, and costs of suit.

9 **EIGHTH CAUSE OF ACTION**

10 **Unfair Competition**

11 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

13 121. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair
14 competition within the meaning of California Business and Professions Code section 17200 *et seq.*
15 This unfair conduct includes all unlawful conduct alleged herein, including but not limited to:
16 DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and
17 practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest
18 periods or pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and
19 accurate itemized wage statements; DEFENDANTS' failure to reimburse business expenses;
20 DEFENDANTS' failure to timely pay all wages upon separation of employment; and
21 DEFENDANTS' failure to provide paid sick leave (or paid time off in lieu thereof) at the properly
22 accrued rates (due to, including but not limited to, DEFENDANTS' failure to incorporate all non-
23 discretionary compensation into the sick pay calculation and failure to base the accrued sick leave
24 on the correct number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction
25 policies and practices, payment according to scheduled hours worked and/or other off-the-clock
26 work policies and practices).

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

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

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

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

14 125. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
15 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
16 by law.

17 **NINTH CAUSE OF ACTION**
18 **Violation of the Private Attorneys General Act of 2004**
19 **(By PLAINTIFF, Aggrieved Employees, and the State of California Against All**
20 **DEFENDANTS)**

21 126. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

22 127. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
23 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State of
24 California and all Aggrieved Employees, regarding violations of the California Labor Code as set
25 forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

26 All current and former non-exempt employees that worked either
27 directly or via a staffing agency for DEFENDANTS at any one or
28 more locations owned, operated, and/or managed by DEFENDANTS
in California, at any time from one year and sixty-five days prior to

1 the filing of the initial complaint through the present (“PAGA
2 Period”).

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

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

15 129. On December 6, 2021, PLAINTIFF WHITTAKER, through counsel, gave written
16 notice by online filing with the California Labor and Workforce Development Agency (“LWDA”)
17 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
18 allegations alleged in this Complaint (“PAGA Notice”). The LWDA assigned PLAINTIFF the
19 following case number: LWDA-CM-856083-21. On April 13, 2022, PLAINTIFF, through her
20 counsel, gave written amended notice by online filing with the LWDA (“Amended PAGA Notice”),
21 to include labor code violations for DEFENDANTS’ failure to produce employment records, as
22 alleged herein. The PAGA Notice and Amended PAGA Notice were sent to DEFENDANTS via
23 certified mail.

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

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

4 132. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
5 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated the California
6 Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 233, 234, 245-248.5, 432, 432.5,
7 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5,
8 and all relevant sections of the applicable Wage Orders, as to PLAINTIFF and Aggrieved
9 Employees. These violations subject DEFENDANTS to civil penalties as set forth in the
10 foregoing statutes as well as other provisions of the Labor Code, including without limitation,
11 Labor Code sections 203, 210, 225.5, 226, 226.3, 256, 558, 558.1, 1174.5, 1197.1 and 2699.

12 133. As set forth above, DEFENDANTS have committed numerous violations of the
13 California Labor Code due to including but not limited to their failure to pay all owed minimum
14 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
15 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
16 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
17 are in addition to any other relief available under the Labor Code.

18 134. Additionally, DEFENDANTS have violated the following Labor Code sections and
19 provisions of the applicable Wage Order as to PLAINTIFF and Aggrieved Employees.

20 135. **Record Keeping Violations.** California Labor Code § 1174 requires employers to
21 keep "accurate and complete" payroll records showing, among other things, the hours worked daily
22 by all non-exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep
23 time records reflecting the times during which all owed meal periods were provided each day.

24 136. Due to DEFENDANTS' automatic meal break deductions, failure to relieve
25 employees of all duties and employer control during meal periods, time rounding, and other off-the-
26 clock work policies and practices described above, DEFENDANTS failed, and continue to fail, to
27 keep accurate and complete records as required by law, including but not limited to the following
28 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF

1 and other Aggrieved Employees began and ended each work period, time records of meal periods,
2 shift start times and end times, and accurate itemized wage statements.

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

9 138. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave laws
10 including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick
11 leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick
12 leave due to DEFENDANTS' failure to account for actual hours worked (by virtue of
13 DEFENDANTS' meal period auto-deduction, and time rounding practices, and other off-the-clock
14 work described herein), and/or failure to incorporate all forms of non-discretionary remuneration
15 into the sick pay calculation and/or failure to provide paid sick leave at all.

16 139. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
17 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
18 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
19 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
20 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

1 141. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
2 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
3 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
4 were entitled to the maximum number of hours accruable.

5 142. Upon information and belief, DEFENDANTS failed and continue to fail to comply
6 with Labor Code section 246, by failing to provide PLAINTIFF and Aggrieved Employees with a
7 Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
8 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
9 wages.

10 143. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

11 144. On information and belief, PLAINTIFF alleges that all of these practices were
12 experienced and continue to be experienced by other Aggrieved Employees.

13 145. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, including but
14 not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

15 146. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
16 employer's refusal to pay wages due and payable and/or the denial of the validity of any claim to
17 wages due. DEFENDANTS violated and continue to violate this section by failing to pay
18 PLAINTIFF and other Aggrieved Employees for all hours worked at the proper wage rate and by
19 failing to pay an additional hour of pay for each meal/rest period not provided or that was otherwise
20 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
21 violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation
22 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
23 the statute provisions were violated.³

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

27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and
2 other Aggrieved Employees of all earned minimum and overtime compensation for all hours worked
3 which resulted in the payment of less than statutorily required wages. DEFENDANTS acted with
4 the intent to deprive them of statutory wages, including, but not limited to, overtime wages and
5 minimum wages, to which they were entitled to under California law. Thus, DEFENDANTS paid
6 PLAINTIFF and other Aggrieved Employees lower wages than those they were entitled to while
7 purporting that PLAINTIFF and other Aggrieved Employees were properly paid. As a result,
8 PLAINTIFF and other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs,
9 and interest thereon, pursuant to Labor Code § 2699(f)-(g).

10 148. **Standard Conditions of Labor Violations:** Together, Labor Code sections 1198
11 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
12 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
13 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
14 commission. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
15 record keeping provisions, unreimbursed business expenses, minimum and overtime wages result
16 in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties
17 under Labor Code sections 1197.1 and 2699.

18 149. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** Unlawful
19 Agreements. Labor Code section 432.5 provides that "no employer...shall require any employee or
20 applicant for employment to agree, in writing, to any term or condition which is known by such
21 employer...to be prohibited by law." Based on information and belief, DEEFENDANTS required
22 PLAINTIFF and required/continue to require Aggrieved Employees to agree in writing to submit to
23 unlawful agreements, criminal and/or financial checks as a condition of obtaining and/or continuing
24 employment.

25 150. The California Labor Code places certain procedural and substantive limits on an
26 employers' ability to conduct employee background checks and on how employers can use the
27 information they obtain through those background checks. Labor Code section 1024.5 states that
28 employers, except for financial institutions, may order a credit check only if the individual works

1 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
2 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
3 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
4 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
5 background check, including but not limited to identifying an appropriate reason for the background
6 check, a separate consent form with required disclosures and certain formatting requirements,
7 additional forms such as a summary of rights, a way by which to request a copy of the report, as
8 well as proper notice of adverse actions taken, among other statutory requirements.

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

13 152. Based on information and belief, DEFENDANTS required PLAINTIFF and
14 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
15 checks which failed to abide by the requirements set forth in Cal. Civ. Code section 1786 *et. Seq.*,
16 and 15 U.S.C. section 1681, *et. seq.*, as a condition of obtaining and/or holding employment.

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

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

25 155. By requiring that PLAINTFF and other Aggrieved Employees sign off on the illegal
26 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

27 156. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
28 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even

1 then, certain limitations apply. Based on information and belief, DEFENDANTS asked PLAINTIFF
2 and other Aggrieved Employees about arrests not resulting in convictions on its employment
3 application, in violation of California law.

4 157. Upon information and belief, DEFENDANTS, in violation of California law,
5 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
6 (“FEHA”), asked PLAINTIFF and other Aggrieved Employees about convictions prior to extending
7 an offer of employment and/or otherwise impermissibly inquired into criminal history on its
8 employment application in violation of California law.

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

14 159. Under the provisions of PAGA and the following Labor Code sections, 201-203, 204,
15 216, 221-223, 226, 226.7, 233, 234, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5,
16 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all relevant sections of the
17 applicable Wage Orders, as well as all interpretations of these laws by California Courts and
18 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
19 are liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the
20 relevant California Labor Code provisions listed herein, or for default PAGA penalties under Labor
21 Code section 2699(f) for any violation of a Labor Code section without a specified civil penalty.
22 Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is
23 entitled to recover civil penalties, costs, plus reasonable attorney’s fees and costs, all in an amount
24 to be proved.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for relief and judgment on behalf of herself, the Class
27 Members, the Aggrieved Employees and the State of California, as follows:

- 28 1. Certification of the above-described Class as a class action, pursuant to Code of Civil

- 1 Procedure section 382;
- 2 2. Certification of the above-described Class as a representative class under Business and
- 3 Professions Code section 17200, *et seq.*;
- 4 3. An order that PLAINTIFF be certified as a representative of the Class;
- 5 4. An order that counsel for PLAINTIFF be confirmed as Class counsel;
- 6 5. Provision of Class Notice to all non-exempt employees who worked for
- 7 DEFENDANTS in California during the Class Period;
- 8 6. A declaratory judgment that DEFENDANTS have knowingly and intentionally
- 9 violated the Business and Professions Code sections 17200-17208, by the conduct set
- 10 forth above;
- 11 7. A declaratory judgment that DEFENDANTS' violations as described above were
- 12 willful;
- 13 8. An equitable accounting to identify, locate, and restore to all Class Members the wages
- 14 that are due;
- 15 9. An award to PLAINTIFF and the Class Members of damages in the amount of unpaid
- 16 minimum wages and overtime wages, including interest thereon, subject to proof at
- 17 trial;
- 18 10. An award to PLAINTIFF and the Class Members of damages in the amount of unpaid
- 19 meal and rest period premiums, pursuant to Labor Code section 226.7;
- 20 11. An award to PLAINTIFF and the Class Members of statutory penalties because of
- 21 DEFENDANTS' failure to provide PLAINTIFF and the Class Members with itemized
- 22 wage statements that comply with the requirements of Labor Code section 226;
- 23 12. An award of payments due to them as waiting time penalties as to those Class
- 24 Members who are no longer employed by DEFENDANTS, pursuant to Labor Code
- 25 section 203;
- 26 13. An award of damages to PLAINTIFF and the Class Members for DEFENDANTS'
- 27 failure to reimburse business expenses pursuant to Labor Code section 2802;
- 28 14. An award to PLAINTIFF and the Class Members of reasonable attorneys' fees and

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costs, pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections
203, 218.5, 226, 226.7, 512, 1194, and/or other applicable laws;
15. For civil penalties according to proof, including PAGA penalties (75% payable to the
LWDA and 25% payable to Aggrieved Employees; and
16. An award to PLAINTIFF and the Class Members and the Aggrieved Employees of
such other and further relief as this Court deems just and proper.

Dated: October 28, 2022 **CROSNER LEGAL, PC**

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie K. Serb, Esq.
Attorneys for Plaintiff,
KAILEE WHITTAKER

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: October 28, 2022

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie K. Serb, Esq.
Attorneys for Plaintiff,
KAILEE WHITTAKER