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10 on behalf of herself, the State of California, and others similarly
11 situated and aggrieved

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 MARIA AMADOR on behalf of herself,
15 the State of California, and others similarly
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 COLONIAL CARE CENTER, INC., a
20 California Corporation; LONGWOOD
21 MANAGEMENT CORP., a California
22 Corporation; and DOES 1-100, inclusive,

23 Defendants.

Case No.: **22STCV21067**

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

1 Plaintiff, MARIA AMADOR, an individual (“PLAINTIFF”) on behalf of herself, the State
2 of California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants COLONIAL CARE CENTER, INC., a California Corporation; LONGWOOD
4 MANAGEMENT CORP., a California Corporation; and DOES 1-100, inclusive, (collectively
5 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
6 as follows:

7 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
16 California statutes, including but not limited to the PAGA, and decisional law and regulations.

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

23 **THE PARTIES**

24 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
25 California and a citizen of the State of California who worked as a full-time non-exempt employee
26 for DEFENDANTS in the State of California. PLAINTIFF worked for DEFENDANTS as a non-
27 exempt certified nursing assistant (CNA) and restorative nurse assistant (RNA) at DEFENDANTS’
28 Colonial Care Center facility located at 1913 East 5th Street, Long Beach, CA 90802. PLAINTIFF

1 worked for DEFENDANTS from in or around 2011 until she went on leave in or around July 2021.

2 5. Defendant COLONIAL CARE CENTER, INC., is a California corporation that, at
3 all relevant times, was authorized to do business within the State of California and is doing business
4 in the State of California. Defendant LONGWOOD MANAGEMENT CORP., is a California
5 corporation that, at all relevant times, was authorized to do business within the State of California
6 and is doing business in the State of California. Defendants COLONIAL CARE CENTER, INC.,
7 and LONGWOOD MANAGEMENT CORP., and its managing agents own, operate, or otherwise
8 manage short term rehabilitation and elder care centers/facilities.

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

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

25 **JOINT LIABILITY**

26 8. Under California law, the definition of the terms “to employ” are broadly construed
27 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
28 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)

1 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
2 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
3 was to reach situations in which multiple entities control different aspects of the employment
4 relationship. Supervision of the work, in the specific sense of exercising control over how services
5 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
6 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
7 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
8 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
9 California, applying a less stringent standard to what constitutes sufficient control by a business
10 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
11 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
12 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
13 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
14 employment,” *Id.* at 875 [emphasis added].

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

22 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
23 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
24 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices and
25 subjected all of the Aggrieved Employees to these same policies and practices regardless of the
26 location(s) where they worked. Among other things, PLAINTIFF is informed and believes that: (1)
27 there is common ownership in, and financial control, in DEFENDANTS’ companies, (2)
28 DEFENDANTS utilize common management, who have control over the day-to-day operations and

1 employment matters, including the power to hire and fire, set schedules, issue employee policies,
2 and determine rates of compensation across its locations in California; (3) DEFENDANTS utilize
3 the same policies and procedures for all California employees, including issuing the same employee
4 handbooks and other form agreements; (4) DEFENDANTS use at least some of the same Human
5 Resources personnel and attorneys to oversee employment matters; and, (6) DEFENDANTS share
6 employees.

7 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
8 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
9 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
10 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
11 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
12 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
13 Employees. For example, some documents in PLAINTIFF's personnel file identify "Longwood
14 Management Corp" as PLAINTIFF's employer, and others identify "Colonial Care Center" as the
15 facility location or employer. As such, DEFENDANTS exercised control over various aspects of
16 PLAINTIFF's employment including but not limited to creating and implementing policies to which
17 PLAINTIFF was subjected to and/or controlling the payment of wages and/or compensation for
18 PLAINTIFF and other Aggrieved Employees.

19 12. Upon further information and belief, PLAINTIFF alleges that DEFENDANTS
20 created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and
21 overtime pay, time-keeping practices, meal and rest periods, reimbursement of business expenses
22 and other working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
23 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
24 PLAINTIFF and Aggrieved Employees in a uniform manner. DEFENDANTS collectively
25 represented to PLAINTIFF and Aggrieved Employees that each was an "at-will" employee of
26 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
27 and Aggrieved Employees' employment with or without cause. Upon information and belief,
28 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in

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

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

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

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

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

22 **PAGA ALLEGATIONS**

23 17. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
24 of herself, the State of California and Aggrieved Employees, regarding violations of the California
25 Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

26 All current and former non-exempt employees that were employed by
27 DEFENDANTS in California at any time from one year plus 65 days
28 from filing of the initial Complaint through the present ("PAGA

Period”).

18. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as she was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 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

COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS

19. On January 28, 2022, PLAINTIFF, through her counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA Letter”).

20. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California Labor Code and the applicable wage orders on behalf of herself, the State of California and other Aggrieved Employees.

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

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

FACTUAL AND LEGAL ALLEGATIONS

1 23. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
2 employed by DEFENDANTS in the State of California as non-exempt employees. DEFENDANTS,
3 at all times, exercised control over PLAINTIFF and each of the Aggrieved Employees, and suffered
4 and/or permitted them to work.

5 24. PLAINTIFF worked for DEFENDANTS from in or around 2011 until July 2021.
6 PLAINTIFF has been employed by DFENDANTS during the relevant period as a non-exempt CNA
7 and RNA at DEFENDANTS' Colonial Care Center facility in Long Beach, CA. PLAINTIFF was
8 typically scheduled to work at least eight (8) hour shifts, five (5) days a week. DEFENDANTS pay
9 PLAINTIFF on an hourly basis.

10 25. **Meal Period Violations.** PLAINTIFF and Aggrieved Employees consistently
11 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
12 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
13 (30) minute first (and second) meal periods. PLAINTIFF and Aggrieved Employees were
14 consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being
15 forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal
16 periods due to the nature and constraints of their job duties and/or commentary from supervisors
17 pressuring them to take non-compliant meal periods or skip meal periods completely. PLAINTIFF
18 and Aggrieved Employees were instructed by their supervisors to clock out for meal periods but to
19 continue working due to the need for PLAINTIFF and Aggrieved Employees to complete their job
20 duties. For example, DEFENDANTS instructed PLAINTIFF to clock out for meal periods, but to
21 continue to tend to her assigned patients' medical and physical needs and/or other work-related
22 duties, including but not limited transporting patients to different locations and/or medical
23 appointments. Based on information and belief, other Aggrieved Employees were also consistently
24 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
25 interrupted and/or cut short and/or were required to work through all or part of the purported meal
26 period due to commentary from supervisors, understaffing, and/or due to the need to complete
27 assigned tasks or job duties.

28 26. DEFENDANTS implemented policies and practices that failed to relieve

1 PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control during
2 unpaid meal periods. DEFENDANTS required PLAINTIFF and Aggrieved Employees to form a
3 line and undergo temperature checks when leaving its premises and when returning to its premises.
4 Such temperature checks took at least a few minutes to complete. Because DEFENDANTS did not
5 provide additional time for Aggrieved Employees to undergo temperature screenings when leaving
6 and entering the premises for meal periods, PLAINTIFF and other Aggrieved Employees would
7 receive less than 30 minutes for their meal period if they left DEFENDANTS' premises.
8 Accordingly, PLAINTIFF and other Aggrieved Employees had to remain on DEFENDANTS'
9 premises for their meal periods in order to get the full 30 minutes of break time to which they are
10 entitled to under California law. As such, whenever PLAINTIFF and other Aggrieved Employees
11 left DEFENDANTS' premises for their meal periods, DEFENDANTS violated California law by
12 not providing them with a full 30-minute meal period. DEFENDANTS also violated California law
13 on those shifts when PLAINTIFF and other Aggrieved Employees remained on premises in order
14 to get a full 30-minute meal period because they were then restricted to DEFENDANTS' premises
15 in violation of California law.

16 27. Based on information and belief, Aggrieved Employees were required to don and
17 doff personal protective equipment during meal periods, thereby depriving them of a full 30-minute
18 meal period. At other times, PLAINTIFF continued working or completing work tasks during
19 purported meal periods.

20 28. Based on information and belief, despite failing to provide lawful meal periods,
21 DEFENDANTS implemented a policy and/or practice of automatically deducting at least thirty
22 minutes per shift for these missed/unlawful meal periods, despite having actual and/or constructive
23 knowledge that PLAINTIFF and other Aggrieved Employees did not receive compliant meal
24 periods.

25 29. DEFENDANTS also failed to keep accurate records of the start and end times of
26 PLAINTIFF's and other Aggrieved Employees' meal period start and end times. Further, based on
27 information and belief, DEFENDANTS illegally rounded the start and end times of employee meal
28 periods resulting in PLAINTIFF and other Aggrieved Employees not being paid for all time worked

1 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
2 58.

3 30. Based on information and belief, per DEFENDANTS' uniform policy and practice,
4 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
5 compliant thirty (30) minute second meal period.

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

12 32. PLAINTIFF is further informed and believes and thereon alleges that
13 DEFENDANTS had actual and/or constructive knowledge that their policies and practices resulted
14 in the denial of lawful meal periods owed to PLAINTIFF and other Aggrieved Employees, in
15 violation of California's meal period laws.

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

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

27 35. PLAINTIFF and other Aggrieved Employees were not adequately informed,
28 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California

1 law. DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods.

2 36. Rest periods were consistently interrupted, cut short, on duty, restricted to premises
3 and/or late due to understaffing, lack of relief workers, the nature and constraints of PLAINTIFF's
4 and other Aggrieved Employees' job duties. For example, PLAINTIFF was frequently deprived of
5 lawful rest periods due to her need to tend to patients' medical and physical needs, and/or complete
6 other job duties including but not limited to accompanying and transporting patients to medical
7 appointments. Other Aggrieved Employees were deprived and continue to be deprived of lawful
8 rest periods due to their need to complete their assigned work tasks, and/or due to understaffing,
9 and/or commentary from supervisors pressuring them to skip rest periods completely or otherwise
10 take non-compliant rest periods.

11 37. PLAINTIFF and other Aggrieved Employees were pressured to complete their work
12 duties according to a designated schedule such that rest periods were only taken once tasks were
13 completed, and/or as time permitted.

14 38. DEFENDANTS implemented policies and/or practices that failed to relieve
15 PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control during rest
16 periods. Moreover, rest periods were either short or restricted to DEFENDANTS' premises due to
17 Aggrieved Employees' need to undergo temperature checks when leaving and entering
18 DEFENDANTS' premises.

19 39. Furthermore, based on information and belief, DEFENDANTS failed to pay a rest
20 period premium for each day in which Aggrieved Employees experienced a missed/improper rest
21 period in violation of California law. DEFENDANTS either failed to pay a rest period premium at
22 all for each workday a proper rest period was not provided and/or failed to pay the proper rest period
23 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
24 shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate of
25 compensation for purposes of calculating the owed rest period premium.

26 40. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
27 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
28 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved

1 Employees for all hours worked by virtue of, including but not limited to, DEFENDANTS'
2 automatic deduction and time rounding policies, payment according to scheduled hours worked
3 instead of actual time worked, mandated pre-shift/post-shift/ and/or other off-the clock work policies
4 and/or practices and failure to relieve employees of all duties/employer control during unpaid meal
5 periods or otherwise unlawful practices for missed or improper meal periods.

6 41. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
7 unable to take off duty, thirty-minute, uninterrupted first and second meal periods, often being
8 forced to work through part or all their meal periods due to the need for PLAINTIFF and other
9 Aggrieved Employees to tend to their work tasks, and/or commentary from supervisors pressuring
10 Aggrieved Employees to take non-compliant meal periods or skip meal periods completely, as
11 alleged above. Based on information and belief, DEFENDANTS implemented a policy and/or
12 practice of automatically deducting thirty minutes per shift for meal periods, despite having actual
13 and/or constructive knowledge that Aggrieved Employees were working through part or all of these
14 purported meal periods, thereby depriving them of all owed minimum and overtime wages.

15 42. Based on information and belief, DEFENDANTS rounded the start and end times of
16 Aggrieved Employees' meal periods resulting in PLAINTIFF and other Aggrieved Employees not
17 being paid for all time worked.

18 43. Based on further information and belief, DEFENDANTS also rounded the shift start
19 and shift end times resulting in PLAINTIFF and other Aggrieved Employees not being paid for all
20 time worked. PLAINTIFF alleges on information and belief that DEFENDANTS implemented a
21 time-rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved
22 Employees of compensable time because the time-rounding system implemented by
23 DEFENDANTS would almost always, if not always, result in understating actual compensable work
24 time. Based on information and belief, when Aggrieved Employees clocked in before the start of
25 their shift time, DEFENDANTS only paid from the start of the scheduled shift time and not from
26 the actual start time.

27 44. Moreover, PLAINTIFF and other Aggrieved Employees were required to perform
28 pre-shift and post-shift off-the-clock work. For example, PLAINTIFF and other Aggrieved

1 Employees were required to form a line and undergo temperature screenings, log their temperature,
2 and/or obtain a mask from DEFENDANTS *before* clocking in. This off-the-clock work lasted at
3 least a few minutes. Aggrieved Employees were also required to undergo off-the-clock temperature
4 screenings if and when Aggrieved Employees left DEFENDANTS' premises for meal periods. On
5 such days, Aggrieved Employees were required to perform this off-the-clock work after clocking
6 out for a meal period and before clocking back in after the purported meal period. Based on
7 information and belief, Aggrieved Employees were also required to perform off-the-clock
8 temperature screenings after completing a shift and after clocking out of work. This post-shift off-
9 the-clock work also lasted at least a few minutes.

10 45. DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to
11 undergo Covid testing outside of their scheduled shift times without compensating PLAINTIFF and
12 other Aggrieved Employees for the travel time to/from the testing sites, time spent waiting for the
13 tests to be performed, and time spent undergoing testing, resulting in significant off-the-clock work.
14 Based on information and belief, DEFENDANTS required off-the-clock Covid testing at least twice
15 per week. Moreover, DEFENDANTS also required Aggrieved Employees to complete continued
16 education and/or training programs while off-the-clock.

17 46. Based on information and belief, at times, DEFENDANTS require Aggrieved
18 Employees to work two shifts in the same day but fail to pay the owed overtime for all hours worked
19 over eight hours in a day and/or forty hours in a week. For example, based on information and belief,
20 DEFENDANTS require Aggrieved Employees that work two shifts in a day, to clock out of work
21 after completing the first shift and then require the same Aggrieved Employee to clock in to work
22 for the second shift so that the hours worked are not continuous. This way, DEFENDANTS pay
23 both shifts at the base rate, depriving Aggrieved Employees of all overtime and double time owed.

24 47. Based on information and belief, DEFENDANTS failed and continue to fail to pay
25 twice Aggrieved Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per
26 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
27 work week, in violation of California's overtime laws.

28 48. Based on information and belief, DEFENDANTS failed to compensate Aggrieved

1 Employees for off the clock work duties including, time spent donning and doffing of personal
2 protective equipment during meal and rest periods, as well as at start and end of shifts.

3 49. Based on information and belief, DEFENDANTS failed and continue to fail to
4 incorporate all non-discretionary remuneration, including but not limited to, shift differential pay,
5 bonus pay, and/or other non-discretionary pay into the regular pay rate(s) of pay used to calculate
6 the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages
7 owed to PLAINTIFF and other Aggrieved Employees.

8 50. Based on information and belief, DEFENDANTS had actual and/or constructive
9 knowledge that its time-rounding and auto-deduction policies and practices and failure to provide
10 off-duty meal periods, mandated off-the-clock work, and other unlawful policies and practices
11 described above resulted in the underpayment of minimum wages and overtimes wages owed to
12 PLAINTIFF and other Aggrieved Employees.

13 51. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
14 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
15 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
16 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
17 required by law, including but not limited to the following records: total daily hours worked,
18 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
19 began and ended each work period, time records of meal periods, and accurate itemized wage
20 statements.

21 52. DEFENDANTS have failed and continue to fail to keep accurate and complete
22 records showing total hours worked by virtue of DEFENDANTS' time rounding and auto deduction
23 policies and practices, failure to relieve PLAINTIFF and other Aggrieved Employees of all duties
24 and employer's control during unpaid meal periods, and other mandated off-the-clock work policies
25 and practices, described herein.

26 53. **Failure to Produce Records.** DEFENDANTS failed and continue to fail to produce
27 or make available a current or former employee's personnel records and/or payroll records when
28 requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For

1 example, PLAINTIFF sent a request for payroll and personnel records to DEFENDANTS. Yet,
2 DEFENDANTS failed to produce complete records within the time periods delineated by California
3 labor law. Based on information and belief, DEFENDANTS failed and continue to fail to timely
4 produce complete payroll and personnel records when requested by other Aggrieved Employees,
5 resulting in violations of Labor Code sections 226(b)-(c), 1198.5, and 432 and the applicable Wage
6 Order.

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

12 **55.** Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
13 recordkeeping provisions, minimum wages, overtime wages, and business expenses result in
14 separate violations of sections 1198 and 1199.

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

20 **57. Statutory Wage Violations.** As described above, DEFENDANTS willfully and
21 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
22 for all hours worked which resulted in the payment of less than the statutorily required wages owed
23 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
24 not limited to, minimum wages and overtime wages, to which they were entitled to under California
25 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
26 Aggrieved Employees lower wages than those they were entitled to while purporting that
27 PLAINTIFF and other Aggrieved Employees were properly paid.

28 **58. Unreimbursed Business Expenses.** DEFENDANTS required PLAINTIFF and

1 Aggrieved Employees to incur business expenses as a direct consequence of the performance of
2 their job duties without providing reimbursement, in violation of Labor Code section 2802. Based
3 on information and belief, PLAINTIFF and Aggrieved Employees were improperly required to
4 provide and maintain work tools that are supposed to be the responsibility of the employer.

5 59. Based on information and belief, DEFENDANTS shifted the costs of doing business
6 onto PLAINTIFF and other Aggrieved Employees by requiring them to pay for business expenses,
7 including but not limited to, use of PLAINTIFF's and other Aggrieved Employees' personal mobile
8 phone and data usage as well as the costs associated with the purchase and/or maintenance of
9 uniforms/clothing and/or vehicle related expenses.

10 60. For example, PLAINTIFF was required to use a personal phone to respond to work-
11 related inquiries from coworkers and/or supervisors. DEFENDANTS also required COVID testing.
12 Based on information and belief, DEFENDANTS did not compensate Aggrieved Employees for the
13 cost of traveling and/or using a personal vehicle to and from a testing site. Based on information
14 and belief, DEFENDANTS also failed to reimburse Aggrieved Employees for the cost of obtaining
15 a COVID test. Based on information and belief, DEFENDANTS also failed to reimburse
16 PLAINTIFF and Aggrieved Employees for mileage, and/or the use of his or her personal vehicle.

17 61. DEFENDANTS did not offer or provide reimbursement for these business-related
18 expenses. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement for
19 all reasonable expenses associated with carrying out their duties required that Aggrieved
20 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
21 2802.

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

1 worked at each hourly rate by the employee.

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

8 64. Moreover, based on information and belief, DEFENDANTS issued wage statements
9 to PLAINTIFF, and Aggrieved Employees that further violate Labor Code section 226(a), by among
10 other things, failing to list the correct name and/or address of the legal entity that is the employer.

11 65. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
12 Employees that were not accurate and did not include all of the statutorily required information. As
13 such, DEFENDANTS violated Labor Code section 226.

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

22 67. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
23 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
24 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
25 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
26 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
27 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
28 used sick leave and the balance of paid sick leave.

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

7 69. Upon information and belief, DEFENDANTS failed and continue to fail to comply
8 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
9 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
10 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
11 wages. Moreover, based on information and belief, DEFENDANTS fail to pay out accrued sick
12 leave upon Aggrieved Employees' request to use paid sick leave.

13 70. Moreover, based on information and belief, DEFENDANTS maintained and
14 continue to maintain and unlawful sick leave policy. For example, DEFENDANTS required
15 PLAINTIFF to agree in writing to an unlawful sick leave policy that requires Aggrieved Employees
16 to complete one year of service in order to receive sick leave. DEFENDANTS' "Employee
17 Acknowledgment Sick Leave Amendment" states as follows: "The company offers sick pay to
18 regular full-time employees who have completed one year of service." Based on information and
19 belief, DEFENDANTS subject Aggrieved Employees to the same or similar policy. Such a policy
20 and/or practice is unlawful. All employers in California are required to provide paid sick leave to
21 all employees, unless the employee is exempt from coverage, which PLAINTIFF and Aggrieved
22 Employees are not. Labor Code section 245.5(b). Employees who work in California for 30 or more
23 days within a year from the commencement of employment are eligible for paid sick leave. Labor
24 Code section 246. As such, PLAINTIFF was entitled to accrued sick leave after the first thirty days
25 of employment completed, since those first 30 days were completed within the first year of
26 employment with DEFENDANTS. Based on information and belief, DEFENDANTS unlawfully
27 required PLAINTIFF and other Aggrieved Employees to be employed for a full year in order to be
28 entitled to sick leave, in violation of California law.

1 71. As such, DEFENDANTS have violated California's paid sick leave laws and
2 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
3 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
4 unlawful practices and policies violate Labor Code sections 245-248.5.

5 72. **Failure to Timely Pay All Wages Upon Separation of Employment .** Based on
6 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
7 were due and owing upon termination or resignation. Based on information and belief,
8 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
9 requirements of Labor Code sections 201-202.

10 73. Upon separation of employment, Aggrieved Employees' final paychecks were not
11 timely provided and/or were not timely provided with all owed vacation pay. Moreover, Aggrieved
12 Employees' final paychecks, once provided, did not include all wages owed as they were devoid of,
13 including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation
14 pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

15 74. These violations subject DEFENDANTS to civil penalties under Labor Code section
16 203, 210, and/or 256.

17 **Unlawful Agreements-Unlawful Criminal History Inquiries.**

18 Unlawful Financial and Criminal Background Checks

19 75. Based on information and belief, DEFENDANTS required PLAINTIFF and
20 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
21 limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
22 employment in violation of Labor Code section 432.5.

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

28 77. Based on information and belief, DEFENDANTS also required PLAINTIFF and

1 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
2 checks as a condition of obtaining and/or holding employment in violation of the Investigative
3 Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair
4 Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*)

5 78. DEFENDANTS required PLAINTIFF and other Aggrieved Employees to agree in
6 writing to a background check which failed to abide by the requirements set forth in CA Civil Code
7 section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to
8 provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous
9 information (including but not limited to information that is relevant to applicants from different
10 states), failing to provide a lawful purpose for the background check, failing to provide a summary
11 of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could
12 request a copy of the report, and failing to properly obtain authorization or consent to such a
13 background check, and thus was an unlawful background check.

14 79. By requiring PLAINTIFF and other Aggrieved Employees to agree in writing to
15 unlawful criminal and/or financial checks not in conformance with the applicable laws,
16 DEFENDANTS violated Labor Code section 432.5.

17 80. Based on further information and belief, DEFENDANTS also required Aggrieved
18 Employees to agree in writing to provide ongoing consent to DEFENDANTS 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 81. Based on further information and belief, DEFENDANTS knew that requiring
23 PLAINTIFF and other Aggrieved Employees to agree to unlawful criminal and/or financial
24 background checks as a condition of obtaining and/or holding employment was unlawful.

25 82. By requiring PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
26 provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

27 Unlawful Inquires into Criminal History

28 83. Labor Code section 432.7 prohibits an employer from asking applicants about past

1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, DEFENDANTS asked PLAINTIFF and other Aggrieved Employees about
3 arrests not resulting in convictions on its employment application, in violation of California law.

4 84. 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, and in violation of Labor code section 432.5.

9 85. Unlawful PAGA Waiver

10 86. Based on information and belief, DEFENDANTS violated Labor Code section 432.5
11 by requiring Aggrieved Employees to agree in writing to other unlawful agreements, including but
12 not limited to, an unlawful waiver of PAGA and or representative actions as a condition of
13 employment.

14 87. Based on information and belief, DEFENDANTS require Aggrieved Employees to
15 agree, in writing, that all disputes regarding the employment relationship will be resolved through
16 binding arbitration. For example, PLAINTIFF was presented with a Terms of Employment and
17 Arbitration Agreement that states that, “the Company and Employee agree that any claim, dispute,
18 and/or controversy that either the Employee may have against the Company ... arising from, related
19 to, or having any relationship or connection whatsoever with the Employee’s employment or other
20 association with the Company, shall be submitted to and determined exclusively by binding
21 arbitration.” The agreement then specifically excludes claims that are not covered by the agreement.
22 Claims brought pursuant to the Private Attorneys General Act are not excluded. As such, claims
23 pursuant to PAGA (which arise from the employment relationship) are necessarily covered by
24 DEFENDANTS’ unlawful mandatory arbitration agreement.

25 88. Agreements purporting to waive an employee’s right to a trial of PAGA claims is
26 contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC*
27 (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels
28 the waiver of representative claims under the PAGA, it is contrary to public policy and

unenforceable as a matter of state law.”)

89. Upon information and belief, DEFENDANTS required Aggrieved Employees to agree in writing to the same or similar agreement, and moreover, knew that such an agreement was in violation of California law. By requiring PLAINTIFF and Aggrieved Employees to agree, in writing, to unlawfully agree to resolve PAGA claims through binding arbitration, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

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

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

FIRST CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS

2698, *ET SEQ.*

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

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

Failure to Keep Accurate Records

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

94. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate and complete 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 PLAINTIFF and other Aggrieved Employees began and ended each work period, time records of the start and end times of meal periods, and accurate itemized wage statements.

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

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

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

22 98. Personnel Records. In addition to their right to time and pay records, employees, and
23 their representatives, have the right to inspect and receive a copy of their personnel files pursuant
24 to Labor Code section 1198.5. This statute applies to both former and current employees. Labor

25 ¹ 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 "[i]n 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 Code section 432 further specifies that employers must furnish copies of all employment records
2 bearing the employee's signature. Labor Code section 1198.5 also requires that the file be made
3 available for inspection or receipt within a "reasonable" amount of time, but "not later than 30
4 calendar days from the date the employer receives a written request." An employer's failure to
5 comply within this timeframe likewise entitles a current or former employee to recover a seven
6 hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

7 99. DEFENDANTS failed to timely produce PLAINTIFF's complete records within the
8 time periods delineated by California labor law. Based on information and belief, DEFENDANTS
9 fail to timely produce or make available Aggrieved Employees' personnel records and/or payroll
10 records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable
11 Wage Order. These violations subject DEFENDANTS to penalties under Labor Code sections 226,
12 1198.5, and 2699.

13 **Meal Period Violations**

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

19 101. Employers must also provide employees with a second duty-free, uninterrupted thirty
20 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
21 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
22 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
23 hours but no more than six (6) hours, the required meal period may be waived by mutual consent
24 of the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
25 hours but no more than twelve (12) hours, the required second meal period may be waived by
26 mutual consent of the employer and employee, but only if the first meal period was not waived.
27 *Ibid.* Upon information and belief, PLAINTIFF did not sign a valid meal period waiver during her
28 employment by DEFENDANTS.

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

9 103. 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.

16 104. 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 above, PLAINTIFF and other Aggrieved Employees were consistently
19 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
20 being forced to take late meal periods, interrupted meal periods and/or work through part or all of
21 their meal periods due to the nature and constraints of their job duties, and/or commentary from
22 supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

23 105. Based on information and belief, DEFENDANTS had and continue to have a
24 continuous policy of rounding the start and end times of employees’ meal periods and/or
25 automatically deducting thirty minutes per shift despite having actual and/or constructive
26 knowledge that PLAINTIFF and Aggrieved Employees did not receive compliant meal periods.

27 106. Moreover, Aggrieved Employees did not receive a timely, uninterrupted second meal
28 period when working shifts over ten (10) hours in a workday.

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

6 108. DEFENDANTS' unlawful meal period policies and practices result in violations of
7 Labor Code sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These
8 violations subject DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699,
9 and all applicable Wage Orders, § 20. These practices result in further violations such as violations
10 of Labor Code § 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

11 **Rest Period Violations**

12 109. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
13 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
14 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
15 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
16 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
17 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up
18 to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.*
19 at 1029). The rest period requirement obligates employers to permit and authorize employees to
20 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
21 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
22 Cal.5th 257. If the employer fails to provide any required rest period, the employer must pay the
23 employee one hour of pay at the employee's regular rate of compensation for each workday the
24 employer did not provide at least one legally required rest period, pursuant to Labor Code section
25 226.7, and applicable IWC Wage Order, §12(B).

26 110. As explained above, PLAINTIFF and other Aggrieved Employees did not receive
27 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.
28 Any purported rest periods were interrupted, restricted to premises, cut short, on duty, and/or late.

1 PLAINTIFF and other Aggrieved Employees were pressured to complete their work such that rest
2 periods were only taken once tasks were completed/as time permitted.

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

9 112. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
10 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
11 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

12 **Minimum and Overtime Wage Violations**

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

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

26 115. As alleged herein, PLAINTIFF and Aggrieved Employees regularly worked
27 minimum and overtime hours for which they were not compensated as required by California law.
28 DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees for all hours

1 worked by virtue of DEFENDANTS' 30-minute automatic deduction (described above) and time
2 rounding policies and practices for meal periods, rounding shift start times and shift end times,
3 payment according to scheduled hours worked instead of actual time worked, and mandated pre-
4 shift and post-shift off-the clock work (described above) as well as off-the-clock work completed
5 when Aggrieved Employees left DEFENDANTS' premises for meal periods (described above) and
6 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
7 unlawful practices for missed or improper meal periods, and other off-the-clock work described
8 above resulted in the failure to account for all hours worked and thus the denial of minimum wages
9 as well as overtime wages owed to PLAINTIFF and Aggrieved Employees who worked more than
10 eight (8) hours in a day or more than forty (40) hours in a week.

11 116. DEFENDANTS had and continue to have a continuous policy of failing to pay
12 PLAINTIFF and Aggrieved Employees for all hours worked.

13 117. Based on information and belief, DEFENDANTS had actual or constructive
14 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
15 meal periods, failing to relieve employees of all duties and employer control during unpaid meal
16 periods, policy and practice of payment according to scheduled time rather than actual work time,
17 and other mandated off-the-clock work resulted in the underpayment of minimum and overtime
18 wages owed to PLAINTIFF and other Aggrieved Employees.

19 118. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
20 and unpaid overtime wages owed to PLAINTIFF and those Aggrieved Employees that worked
21 more than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid double
22 time wages.

23 119. Based on information and belief, DEFENDANTS require Aggrieved Employees to
24 work two shifts in the same day but fail to pay the owed overtime for all hours worked over eight
25 hours in a day and/or forty hours in a week.

26 120. Moreover, based in information and belief, DEFENDANTS failed to pay proper
27 overtime rates to PLAINTIFF and Aggrieved Employees due to DEFENDANTS' failure to
28 incorporate all non-discretionary remuneration, including but not limited to, shift differential pay,

1 bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the
2 owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed
3 to PLAINTIFF and Aggrieved Employees.

4 121. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
5 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
6 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable
7 IWC Wage Orders, section 20.

8 **Statutory Wage Violations**

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

20 **Refusal to Make Payment**

21 123. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
22 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
23 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
24 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
25 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
26 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
27 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
28

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

2 **Business Expense Violations**

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

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

21 126. As described above, PLAINTIFF and the Aggrieved Employees were improperly
22 required to pay for business expenses that are legally the responsibility of the employer, including
23 but not limited to costs associated with using a personal cell phone/data plan usage and charges, as
24 well as costs associated with the purchase and/or maintenance of uniforms/clothing and/or vehicle-
25 related expenses, and costs associated with Covid testing.

26
27 ² 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).

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

5 128. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
6 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
7 DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

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

12 **Wage Statement Violations**

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

23 131. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved Employees with
24 meal and rest periods that complied with Labor Code section 226.7, the wage statements
25 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
26 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
27 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
28 earned, in violation of Labor Code section 226(a)(5); and (d) 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, in violation of Labor Code section 226(a)(9).

3 132. Moreover, due to violations detailed above, including but not limited to,
4 DEFENDANTS' failure to pay minimum and overtime wages for all hours worked, failure to pay
5 all sick leave wages at the proper rates, and failure to provide meal and rest break premiums,
6 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
7 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
8 the earned gross and net wages earned and the correct applicable rates of pay for all hours worked.

9 133. Moreover, wage statements issued by DEFENDANTS failed to indicate the earned
10 gross and net wages earned during the pay period, the correct applicable rates of pay for all hours
11 worked, and the "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of the
12 automatic deduction for meal periods and time-rounding policies and practices and other off-the-
13 clock work policies and practices, all described in greater detail *supra*) which results in a violation
14 of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an
15 inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22
16 Cal.App.5th 1308, 1337).

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

20 135. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
21 they could not easily determine whether they received all wages owed to them and whether they
22 were paid for all hours worked.

23 136. Separately, and independent of the above allegations, based on information and
24 belief, DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved Employees that
25 further violate Labor Code section 226(a), by failing to list the correct name and/or address of the
26 legal entity that is the employer.

27 137. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and the
28 Aggrieved Employees with accurate, itemized wage statements.

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

4 **Standard Conditions of Labor Violations**

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

12 **Sick Leave Violations**

13 140. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
14 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
15 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
16 DEFENDANTS’ failure to account for actual hours worked (as a result of the rounding/automatic
17 deduction policies and practices for meal periods and shift start and end times/other required off-
18 the-clock work described herein), and/or failure to incorporate multiple rates of pay and/or all forms
19 of non-discretionary remuneration including but not limited to, non-discretionary bonuses, shift
20 differential pay, and/or other non-discretionary compensation into the sick leave pay rate
21 calculation.

22 141. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
23 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
24 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of
25 used sick leave and the balance of paid sick leave left to the employees, which affected
26 PLAINTIFF’s and Aggrieved Employees’ intelligent exercise of their paid sick leave.

27 142. But for this failure, PLAINTIFF and other Aggrieved Employees would have used

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

1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

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

8 144. Upon information and belief, DEFENDANTS failed and continue to fail to comply
9 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
10 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
11 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
12 wages. Moreover, based on information and belief, DEFENDANTS fail to pay out accrued sick
13 leave upon Aggrieved Employees' request to use paid sick leave. As alleged above,
14 DEFENDANTS maintain an unlawful sick leave policy that requires Aggrieved Employees to
15 complete one year of service in order to receive sick leave.

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

17 146. On information and belief, PLAINTIFF alleges that all of these practices were
18 experienced and continue to be experienced by other Aggrieved Employees.

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

22 **Untimely Payment of Final Wages**

23 148. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
24 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
25 and payable immediately." California Labor Code section 202(a) provides, in relevant part, that
26 "[i]f an employee not having a written contract for a definite period quits his or her employment,
27 his or her wages shall become due and payable not later than 72 hours thereafter, unless the
28 employee has given 72 hours previous notice of his or her intention to quit, in which case the

1 employee is entitled to his or her wages at the time of quitting.”

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

8 150. Based on information and belief, DEFENDANTS fail to timely pay final wages to
9 Aggrieved Employees upon separation of employment in violation of Labor Code sections 201-
10 202 and/or did not include all owed vacation pay and/or fail to timely provide final wages with all
11 owed vacation and/or paid time off. Based on information and belief, DEFENDANTS untimely
12 provide final wages to Aggrieved Employees without regard to the timing requirements of Labor
13 Code sections 201-202.

14 151. Moreover, final paychecks, once provided to Aggrieved Employees did not include
15 all wages owed as they are devoid of, including but not limited to, all owed minimum wages,
16 overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages
17 at the properly accrued rates.

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

21 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

22 153. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
23 require any employee or applicant for employment to agree, in writing, to any term or condition
24 which is known by such employer...to be prohibited by law.” Based on information and belief,
25 DEFENDANTS required and continue to require PLAINTIFF and Aggrieved Employees to agree
26 in writing to submit to unlawful criminal and/or financial checks as a condition of obtaining and/or
27 continuing employment.

28 154. The California Labor Code places certain procedural and substantive limits on an

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
11 the report, as well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

1 159. By requiring that PLAINTIFF and other Aggrieved Employees sign off on the illegal
2 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

3 Unlawful Inquires into Criminal History

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

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

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

18 163. Based on further information and belief, DEFENDANTS require Aggrieved
19 Employees to agree in writing to waive the right to bring a PAGA action in court, in violation of
20 California law, which further violates Labor Code section 432.5.

21 164. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to
22 various unlawful provisions as a condition of employment.

23 165. Under the provisions of PAGA and the above mentioned Labor Code sections,
24 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
25 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
26 1198.3, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
27 interpretations of these laws by California Courts and administrative bodies, as well as any other
28 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

12 **PRAYER FOR RELIEF**

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

- 15 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
16 25% payable to Aggrieved Employees);
17 2. For an order temporarily, preliminarily and permanently enjoining and restraining
18 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
19 3. For reasonable attorney's fees and costs of suit; and
20 4. For such other and further relief that the Court deems just and proper.

21
22 Dated: June 28, 2022

CROSNER LEGAL, PC

23
24 By: 

25 Michael R. Crosner, Esq.
26 Zachary M. Crosner, Esq.
27 Blake R. Jones, Esq.
28 Attorneys for Plaintiff
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