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14 Attorneys for Plaintiff MIGUEL ROMERO,
 15 as an individual on behalf of himself and on behalf of all others similarly
 16 situated

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 18 **COUNTY OF LOS ANGELES**

19 MIGUEL ROMERO, as an individual on
 20 behalf of himself and on behalf of all
 21 others similarly situated,

22 Plaintiff,

23 v.

24 HITEX DYEING & FINISHING, INC., a
 25 California Corporation, and DOES 1-100,
 26 inclusive,

27 Defendants

Case No.: 22STCV00158

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

FILED
 Superior Court of California
 County of Los Angeles

04/20/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: T. Bivins Deputy

1 Plaintiff, MIGUEL ROMERO (“PLAINTIFF ROMERO” or “PLAINTIFF”), on behalf of
2 himself, the State California, other similarly situated Class Members (defined below) and Aggrieved
3 Employees (defined below), hereby files this First Amended Complaint against Defendant HITEX
4 DYEING & FINISHING, INC (“HITEX”) and DOES 1-100, inclusive (collectively referred to as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

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

13 **THE PARTIES**

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

17 3. PLAINTIFF ROMERO worked for DEFENDANTS in City of Industry, California
18 during the relevant time period.

19 4. Defendant HITEX is a California Corporation that, at all relevant times, was
20 authorized to do business within the State of California and is doing business in the State of
21 California. Defendant HITEX and its managing agents own, operate, or otherwise manage a
22 warehouse in City of Industry, California where employees, among other tasks, dye textiles and
23 deliver finished products to customers. Defendant HITEX dyes textiles for many well-known names
24 in the fashion industry.

25 5. The true names and capacities of the DOE Defendants sued herein as DOES 1
26 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
27 Defendant by said fictitious names. Each of the DEFENDANTS designated herein as a DOE is
28 legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to

1 amend this Complaint to reflect the true names and capacities of the Doe Defendants when such
2 identities become known.

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

13 JOINT LIABILITY

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

24 8. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF, the Class
25 Members and Aggrieved Employees were jointly employed by DEFENDANTS for purposes of the
26 Wage Orders, under the alternative definitions of “to employ” adopted by the California Supreme
27 Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over
28 wages, hours and working conditions of PLAINTIFF, Class Members and Aggrieved Employees;

1 (2) suffered or permitted PLAINTIFF, Class Members and Aggrieved Employees to work for them;
2 and, (3) engaged PLAINTIFF, Class Members and Aggrieved Employees to work for them.

3 9. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
4 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
5 human resources as a set forth herein. As a result, DEFENDANTS utilized the same unlawful
6 policies and practices and subjected all of the Class Members to these same policies and practices.

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

26 11. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
27 and working conditions of PLAINTIFF, Class Members and Aggrieved Employees. As such,
28 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's, Class

1 Members' and Aggrieved Employees' employment, including the instrumentality that resulted in
2 the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

3 12. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
4 control over, applied the same policies and practices, and engaged in the same acts and omissions
5 with regard to the other Class Members and Aggrieved Employees.

6 **CLASS ALLEGATIONS**

7 13. PLAINTIFF brings this action on behalf of himself, and all others similarly situated
8 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
9 represent is defined as follows and referred to collectively as the "Class" or "Class Members": "All
10 current and former non-exempt employees that worked directly or via a staffing agency for
11 DEFENDANTS in California at any time within the four years prior to the filing of the initial
12 Complaint."

- 13 a. **Numerosity.** While the exact number of Class Members is unknown to
14 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
15 all members is impractical under the circumstances of this case. PLAINTIFF is
16 informed and believes the Class consists of at least 100 individuals
- 17 b. **Common Questions of Law and Fact.** This lawsuit is suitable for class
18 treatment because common questions of law and fact predominate over
19 individual issues. Common questions include, but are not limited to, the
20 following: (1) whether DEFENDANTS understated hours worked and failed to
21 pay all amounts due to PLAINTIFF and the Class Members for wages earned,
22 including minimum wages and overtime wages, under California law, as a result
23 of DEFENDANTS' automatic deduction policy, rounding policy, payment of
24 wages based on scheduled hours instead of actual hours worked, and unlawful
25 meal period policies and practices; (2) whether DEFENDANTS provided
26 PLAINTIFF and the Class Members with all meal periods or premium payments
27 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
28 provided PLAINTIFF and the Class Members with all rest periods or premium

1 payments in lieu thereof, in compliance with California law; (4) whether
2 DEFENDANTS provided PLAINTIFF and the Class Members with accurate,
3 itemized wage statements in compliance with California law, displaying,
4 including but not limited to, all hours worked and the correct name and address
5 of the legal entity that is the employer; (5) whether DEFENDANTS timely paid
6 PLAINTIFF and the Class Members all wages due upon separation of
7 employment; (6) whether DEFENDANTS failed to reimburse PLAINTIFF and
8 the Class Members for all business expenses; and (7) whether DEFENDANTS
9 violated California Business and Professions Code sections 17200, *et seq.*

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

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

15 **FACTUAL ALLEGATIONS**

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

22 15. PLAINTIFF was employed by DEFENDANTS for approximately nine years as a
23 full-time non-exempt employee during the relevant time period, until the separation of his
24 employment in or about September 2021. PLAINTIFF worked in the shipping department at
25 DEFENDANTS' warehouse in City of Industry.

26 16. PLAINTIFF was typically scheduled to work shifts that lasted at least eight (8) hours
27 to eleven (11) hours per day and sometimes up to twelve (12) hours per day. PLAINTIFF typically
28 worked 5 days per week.

1 17. **Meal Periods.** PLAINTIFF, Class Members and Aggrieved Employees regularly
2 worked shifts of five and one half (5 ½) hours or more and were entitled to at least one thirty-minute
3 uninterrupted meal period. However, PLAINTIFF, Class Members and Aggrieved Employees did
4 not receive a timely thirty-minute meal periods or were required to work through purported meal
5 periods. PLAINTIFF and other Class Members and Aggrieved Employees were not adequately
6 informed, authorized, instructed about, nor permitted an opportunity to take lawful meal breaks per
7 California law. PLAINTIFF, Class Members and Aggrieved Employees were consistently unable to
8 take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
9 periods (i.e. after the fifth hour of work) and/or work through part or all their meal periods due to
10 the nature and constraints of their job duties and/or commentary from supervisors pressuring them
11 to take non-compliant breaks or skip breaks completely. For example, PLAINTIFF's scheduled shift
12 regularly started at 7:00 am, but often took his meal break after 12:00 pm and sometimes as late as
13 2:00 pm or later. Moreover, PLAINTIFF was pressured to complete work tasks, including but not
14 limited to, completing deliveries prior to taking a meal break and/or was at times, interrupted during
15 a meal break with calls from supervisors or managers requesting the status of a delivery. Based on
16 information and belief, other Class Members and Aggrieved Employees were also unable to take
17 timely, duty-free meal periods, and/or were interrupted during their meal periods.

18 18. Based on information and belief, DEFENDANTS implemented an unlawful practice
19 and/or policy in which PLAINTIFF, Class Members and Aggrieved Employees were instructed by
20 their supervisors to clock out for meal periods but to continue working. Based on further information
21 and belief, DEFENDANTS also implemented policies and practices that failed to relieve
22 PLAINTIFF, Class Members and Aggrieved Employees of all duties and DEFENDANTS' control
23 during unpaid meal breaks.

24 19. Based on information and belief, DEFENDANTS also implemented a policy and/or
25 practice of automatically deducting/requiring PLAINTIFF and other Class Members and Aggrieved
26 Employees to clock out at least thirty minutes per shift for these missed/interrupted/improper meal
27 periods, despite having actual and/or constructive knowledge that PLAINTIFF and other Class
28 Members did not receive compliant meal periods. For example, PLAINTIFF was usually unable to

1 clock out for meal periods because he was often making deliveries during his purported meal
2 periods. Yet, DEFENDANT either logged a meal period for him and/or automatically deducted
3 thirty minutes per shift irrespective of whether PLAINTIFF actually took a timely uninterrupted
4 meal period. For instance, PLAINTIFF's timecards show that his start shift time and end times were
5 time stamped by a computer or machine. However, his meal break's start and end times were
6 handwritten. According to the handwritten entries, PLAINTIFF's meal breaks always started at
7 precisely 11:30 am and ended at precisely 12:00 pm irrespective of his actual start time and/or the
8 number of hours he worked. Based on information and belief, DEFENDANTS had and continue to
9 have a policy and/or practice of similarly logging Class Members' and Aggrieved Employees' meal
10 periods with a start time of 11:30 am and end time of 12:00 pm, irrespective of when the shift started,
11 whether a meal period was actually afforded at this time and/or whether the meal period was
12 interrupted or cut short.

13 20. As explained above, PLAINTIFF, Class Members and Aggrieved Employees were
14 consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their
15 meal periods interrupted and/or cut short due to their need to complete work-related tasks. For
16 example, PLAINTIFF regularly took his meal break after working more than five hours. On
17 information and belief, other Class Members and Aggrieved Employees were also unable to take
18 timely thirty-minute meal periods due to the nature of their job, workload, and/or commentary from
19 supervisors. Based on information and belief, DEFENDANTS implemented policies and practices
20 that failed to relieve PLAINTIFF, Class Members and Aggrieved Employees of all duties and
21 DEFENDANTS' control during unpaid meal periods.

22 21. Based on information and belief, DEFENDANTS regularly recorded meal breaks as
23 if they were timely taken, even though a meal period was not actually afforded at that time and/or
24 were otherwise not in accordance with California law. Based on further information and belief,
25 DEFENDANTS rounded the start and end times of PLAINTIFF's, Class Members' and Aggrieved
26 Employees' meal periods resulting in PLAINTIFF, Class Members and Aggrieved Employees not
27 being paid for all time worked as well as late or shortened meal periods. *See Donohue v. AMN*
28 *Services, LLC* (2021) 11 Cal.5th 58. For example, PLAINTIFF's wage statements show that his

1 hours worked were rounded to the nearest quarter, half, or whole hour. Moreover, PLAINTIFF's
2 timecards show that meal periods were consistently logged with a start time of 11:30 am and an end
3 time of 12:00 pm, even when a meal period was not afforded at this time.

4 22. PLAINTIFF is further informed and believes and thereon alleges that
5 DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-
6 deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF,
7 Class Members and Aggrieved Employees in violation of California's meal period laws. Liability
8 for the Class Members and Aggrieved Employees can be established by evidence that an employer
9 adopted a uniform corporate break policy that failed to give full effect to California law and the
10 applicable Wage Order requirements. The fact that employees may legally waive meal breaks does
11 not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

12 23. Based on information and belief, DEFENDANTS did not have a lawful written meal
13 break policy, nor did DEFENDANTS have any sort of compliant policy in practice.

14 24. Moreover, DEFENDANTS failed to provide a second meal break to PLAINTIFF,
15 Class Members and Aggrieved Employees that worked shifts of more than ten hours in a shift.
16 DEFENDANTS failed to provide PLAINTIFF, Class Members and Aggrieved Employees with a
17 second uninterrupted meal period despite working over ten hours in a workday and thus being
18 entitled to a second duty-free, uninterrupted, thirty-minute meal period before the end of the tenth
19 hour of work. For example, on January 8, 2021, PLAINTIFF's timecard shows that his shift started
20 at 6:49 am and ended at what appears to be 6:00 pm as indicated by the time stamp. There is also a
21 handwritten entry indicating only a single meal period between 11:30 am and 12:00 pm. There is no
22 record of a second meal period during this shift, even though PLAINTIFF worked over ten hours
23 and was entitled to a second meal period.

24 25. Moreover, upon information and belief, DEFENDANTS failed to pay PLAINTIFF
25 Class Members and Aggrieved Employees an additional hour of wages at their respective regular
26 rates of pay for each workday a proper meal period was not provided, as required by California law.
27 *Brinker, supra*, 53 Cal.4th 1004. As such, DEFENDANTS failed to pay a meal period premium at
28 all for each workday a lawful meal period was not provided, and even if and when a meal premium

1 was paid, DEFENDANTS failed to pay the proper meal period premium for failure to incorporate
2 all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay, shift
3 differential pay, and/or other non-discretionary compensation into the regular rate for purposes of
4 calculating the owed meal period premium at the correct regular rate of compensation.

5 26. **Rest periods.** DEFENDANTS did not properly authorize and provide PLAINTIFF,
6 Class Members and Aggrieved Employees with lawful rest periods at a rate of every four (4) hours
7 worked or major fraction thereof.

8 27. PLAINTIFF, Class Members and Aggrieved Employees were not adequately
9 informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per
10 California law.

11 28. Any purported rest periods were interrupted, cut short, on duty, and/or late due to the
12 nature and constraints of PLAINTIFF's, Class Members' and Aggrieved Employees' job duties
13 and/or commentary from supervisors pressuring them to skip rest breaks completely or take non-
14 compliant rest breaks. For example, PLAINTIFF was rarely afforded the opportunity to take a
15 timely off-duty rest period and regularly worked through any purported rest periods. When
16 PLAINTIFF worked in the warehouse, PLAINTIFF was not afforded a timely duty-free rest period
17 irrespective of the number of hours he worked. Likewise, when PLAINTIFF made deliveries, he
18 was not afforded a timely duty-free rest period.

19 29. PLAINTIFF, Class Members and Aggrieved Employees were pressured to complete
20 their work duties according to a designated schedule such that rest breaks were only taken once jobs
21 were completed/if time permitted. For example, PLAINTIFF regularly worked shifts lasting over
22 ten hours, but was not provided with a single compliant rest period.

23 30. Based in information and belief, DEFENDANTS did not have a lawful policy,
24 instruction, or practice as to the taking, timing, or duty-free nature of rest periods. Based on
25 information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve
26 Class Members and Aggrieved Employees of all duties and employer control during rest periods.

27 31. Despite not providing lawful rest periods, DEFENDANTS failed to pay PLAINTIFF
28

1 Class Members and Aggrieved Employees with an additional hour of pay at the regular rate of
2 compensation for each missed, or otherwise unlawful rest period.

3 32. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate all
4 hours worked, including all owed minimum and overtime wages. As explained above, PLAINTIFF,
5 Class Members and Aggrieved Employees were regularly required to perform off-the-clock work
6 by virtue of DEFENDANTS' automatic-deduction policy for meal periods. On information and
7 belief, the work time reported by PLAINTIFF, Class Members and Aggrieved Employees was
8 rounded and automatically deducted for at least 30 minutes of wages every day they worked for
9 DEFENDANTS for meal breaks not taken, interrupted, or not relieved of all duties and employer
10 control. Per DEFENDANTS' policies and practices, PLAINTIFF, Class Members and Aggrieved
11 Employees were required to clock out for at least thirty minutes per shift for purported meal periods,
12 despite DEFENDANTS' actual and/or constructive knowledge that they were working through part
13 or all these meal periods.

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

18 34. PLAINTIFF alleges on information and belief that DEFENDANTS implemented
19 a time-rounding system that as applied systematically deprived PLAINTIFF, Class Members and
20 Aggrieved Employees of compensable time because the time-rounding system implemented by
21 DEFENDANTS would almost always, if not always, result in understating actual compensable work
22 time. Moreover, based on information and belief, DEFENDANTS had and continue to have a
23 continuous policy of paying for scheduled hours, rather than actual hours worked. For example,
24 PLAINTIFF's timecards show that he consistently clocked into work several minutes before his
25 scheduled shift time, sometimes more than ten minutes prior to his scheduled shift start time. Yet
26 PLAINTIFF was only paid from the start of his scheduled shift time instead of his actual start time.
27 Additionally, PLAINTIFF's wage statements show that DEFENDANTS rounded his total hours
28 worked to the nearest quarter, half, or whole hour.

1 35. DEFENDANTS' failure to pay for all time worked by virtue of its time-rounding
2 practices resulted in the underpayment of minimum wages owed to PLAINTIFF, Class Members
3 and Aggrieved Employees as well as unpaid overtime wages for those that worked more than eight
4 (8) hours in a day and/or forty (40) hours in a week.

5 36. DEFENDANTS' automatic deduction and time rounding policies and practices
6 described herein resulted in a failure to account for all hours worked and deprived PLAINTIFF,
7 Class Members and Aggrieved Employees of all owed minimum and overtime wages for those that
8 worked more than eight (8) hours in a day or more than forty (40) hours in a week.

9 37. Based on further information and belief, DEFENDANTS required/requires
10 PLAINTIFF and other Class Members and Aggrieved Employees to perform off-the-clock work.
11 DEFENDANTS required/requires PLAINTIFF, Class Members and Aggrieved Employees to
12 undergo Covid testing outside of their scheduled shift times without compensating them for the
13 travel time to/from the testing sites, time spent waiting for the tests to be performed, and time spent
14 undergoing testing, resulting in significant off-the-clock work and the underpayment of minimum
15 and overtime wages.

16 38. Based on further information and belief, DEFENDANTS also failed to pay the
17 correct overtime rate to Class Members and Aggrieved Employees due to DEFENDANTS' failure
18 to incorporate all forms of non-discretionary compensation, including but not limited to, shift
19 differential pay and/or non-discretionary bonus pay and/or other forms of non-discretionary pay,
20 into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the
21 underpayment of overtime wages owed.

22 39. Based on information and belief, DEFENDANTS failed to pay twice Class
23 Members' and Aggrieved Employees' regular rate(s) of pay for time worked beyond twelve (12)
24 hours per day and for time worked beyond eight (8) hours on the seventh consecutive day of work
25 in a work week, in violation of California's overtime law.

26 40. Based on further information and belief, DEFENDANTS failed to properly blend
27 multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation
28 and underpayment of overtime wages owed to PLAINTIFF, Class Members, and other Aggrieved

1 Employees.

2 41. Based on information and belief, DEFENDANTS had actual and/or constructive
3 knowledge that its time-rounding, auto-deduction policies, failure to provide off-duty meal periods,
4 and other off-the-clock work policies and practices described herein resulted in violations of
5 California's minimum and overtime wage laws.

6 42. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
7 provide PLAINTIFF, Class Members and Aggrieved Employees with accurate wage statements that
8 complied with Labor Code section 226. DEFENDANTS issued wage statements to PLAINTIFF,
9 Class Members and Aggrieved Employees that failed to among other things, indicate the gross and
10 net wages earned during the pay period, and the correct applicable rates of pay for all hours worked,
11 DEFENDANTS provided wage statements that failed to indicate the total hours worked by
12 PLAINTIFF and other Class Members and Aggrieved Employees (by virtue of the automatic
13 deduction for meal periods, time-rounding policies and practices, and other off-the-clock work
14 described herein). Moreover, DEFENDANTS issued wage statements that failed to list the correct
15 name and address of the legal entity that is the employer. For example, DEFENDANTS provided
16 PLAINTIFF with wage statements that listed an incomplete address for the legal entity that is the
17 employer. The employer's address listed on PLAINTIFF's wage statements is: "355 N. Vineland
18 Ave." Based on information and belief, DEFENDANTS provided Class Members and Aggrieved
19 Employees with wage statements that also failed to list the correct address of the legal entity that is
20 the employer. Accordingly, DEFENDANTS violated Labor Code § 226 by providing wage
21 statements that were inaccurate and failed to include all of the statutorily required information.

22 43. **Unreimbursed Business Expenses.** DEFENDANTS also failed to compensate
23 PLAINTIFF, Class Members and Aggrieved Employees for business-related expenses incurred in
24 direct consequence of the discharge of their duties or of their obedience to the directions of the
25 employer. PLAINTIFF, Class Members and Aggrieved Employees were improperly required to
26 provide and maintain work tools that are supposed to be the responsibility of the employer. Based
27 on information and belief, DEFENDANTS shifted its costs of doing business onto PLAINTIFF,
28 Class Members and Aggrieved Employees by requiring them to pay for its business expenses,

1 including but not limited to, use of PLAINTIFF's, Class Members' and Aggrieved Employees'
2 personal mobile phone, data plan usage and charges. For example, PLAINTIFF received calls and
3 messages to his personal phone from managers and/or supervisors for work related purposes,
4 including but not limited to, scheduling purposes and delivery updates. PLAINTIFF was not
5 reimbursed for these business expenses.

6 44. Moreover, Class Members and Aggrieved Employees were not reimbursed for the
7 cost of undergoing covid testing, including but not limited to purchasing the test, and/or the cost of
8 traveling and/or using a personal vehicle to travel to and from a testing site.

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

13 46. **Failure to Timely Pay Wages.** DEFENDANTS failed to timely pay PLAINTIFF,
14 Class Members and Aggrieved Employees all wages that were due and owing upon termination or
15 resignation. Labor Code sections 201 and 202, together require employers to pay all wages
16 immediately upon discharge and/or within 72 hours of an employees' resignation. Upon separation
17 of employment, PLAINTIFF's, Class Members' and Aggrieved Employees' final paychecks were
18 not timely provided. Based on information and belief, DEFENDANTS provide final wages to Class
19 Members and Aggrieved Employees on the regular pay day without regard to the timing
20 requirements of Labor Code sections 201-202. Upon termination, PLAINTIFF was not provided
21 with his final wages on the date of termination. Instead, DEFENDANTS provided PLAINTIFF with
22 his final wages a few days after the date of his termination. Based on information and belief,
23 DEFENDANTS also failed to timely pay wages in accordance with the timing requirements set
24 forth in Labor Code sections 201 and 202 to Class Members and Aggrieved Employees who are no
25 longer employed.

26 47. Moreover, PLAINTIFF's, Class Members' and Aggrieved Employees' final
27 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
28 limited to, all owed minimum wages, overtime wages, premium wages for unlawful meal and rest

1 breaks, and/or all owed vacation pay, and all owed sick leave, and/or paid time off wages at the
2 properly accrued rates.

3 48. PLAINTIFF is informed and believes and allege thereon that DEFENDANTS
4 engaged in these same herein described unlawful practices with regard to all of the Class Members,
5 and Aggrieved Employees (defined below) and that DEFENDANTS applied these same herein
6 described unlawful practices to all of their employees that it applied to PLAINTIFF.

7 **FIRST CAUSE OF ACTION**

8 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
9 **(Against All DEFENDANTS)**

10 49. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

16 51. DEFENDANTS violated California’s minimum wage laws by failing to compensate
17 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
18 DEFENDANTS’ auto-deduction policy and practice for meal periods, paying for scheduled hours
19 instead of actual hours worked, off the-clock work, and rounded time entries.

20 52. DEFENDANTS had and continue to have a continuous policy of failing to pay
21 PLAINTIFF and Class Members for all hours worked.

22 53. Based on information and belief, DEFENDANTS had and continue to have a
23 continuous policy of rounding PLAINTIFF and Class Members time punches, including the start
24 and end of shift times, and meal period time punches. On information and belief, this policy favored
25 DEFENDANTS more often than not, resulting in significant uncompensated time worked by
26 PLAINTIFF and Class Members.

27 54. Based on information and belief, DEFENDANTS had and continue to have a
28 continuous policy of paying PLAINTIFF and Class Members for scheduled hours, rather than actual
hours worked.

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

4 **SECOND CAUSE OF ACTION**
5 **Recovery of Unpaid Overtime Wages**
6 **(Against All Defendants)**

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

8 57. Employees in California must be paid overtime, equal to one and one-half times the
9 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
10 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
11 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
12 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
13 consecutive day of work in a workweek, unless they are exempt.

14 58. PLAINTIFF and the Class Members worked overtime hours for which they were not
15 compensated by DEFENDANTS by virtue of DEFENDANTS' auto-deduction and time-
16 rounding/time-shaving policies, mandated off-the-clock work policies and practices described
17 above, and practice of only paying for scheduled hours instead of actual hours worked.

18 59. Based on information and belief, DEFENDANTS failed to properly blend multiple
19 rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation and
20 underpayment of overtime wages owed to PLAINTIFF and Class Members.

21 60. Based on further information and belief, DEFENDANTS further violated
22 California's overtime wage laws by failing to incorporate all non-discretionary compensation,
23 including but not limited to, non-discretionary bonus compensation and/or shift differentials, into
24 the regular rate of pay used to calculate the overtime rate of pay. Failing to include non-discretionary
25 compensation in the regular rate of pay resulted in a miscalculation of the overtime wage rate,
26 resulting in the underpayment of overtime wages owed to PLAINTIFF and the Class Members.

27 61. DEFENDANTS' conduct described above is in violation of California Labor Code
28 sections 510 and 1194 and all applicable Wage Orders.

 62. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime

1 wages, plus attorney's fees and costs, in an amount to be proved.

2 **THIRD CAUSE OF ACTION**

3 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4 **(Against All DEFENDANTS)**

5 63. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 64. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
7 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
8 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
9 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
10 waived, but only under the following circumstances: (1) if an employee's total work period in a day
11 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
12 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
13 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
14 waived by mutual consent of the employer and employee, but only if the first meal period was not
15 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
16 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
17 done so. If the employer fails to properly record a valid meal period, it is presumed no meal period
18 was provided.

19 65. PLAINTIFF and the Class Members were consistently unable to take timely, off
20 duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods and/or
21 work through part or all of their meal periods due to the nature and constraints of their job duties,
22 and/or commentary from DEFENDANTS pressuring them to take non-compliant breaks or skip
23 breaks completely.

24 66. Based on information and belief, DEFENDANTS had and continue to have a
25 continuous policy of clocking out PLAINTIFF and Class Members for 30 minutes with a meal
26 period start time of 11:30 am and end time of 12:00 pm, even though PLAINTIFF and Class
27 Members did not take a meal period at this time and/or were not relieved of all duties and employer
28 control during said meal periods, rendering the unpaid time compensable under California law.

67. DEFENDANTS had actual and/or constructive knowledge that PLAINTIFF and the

1 Class Members did not receive compliant meal periods. Based on further information and belief,
2 DEFENDANTS rounded the start and end times of employee meal periods resulting in PLAINTIFF
3 and the Class Members receiving late or shortened meal periods. PLAINTIFF is further informed
4 and believes and thereon alleges that DEFENDANTS had actual or constructive knowledge that its
5 time-rounding and auto-deduction policies and practices resulted in the denial of meal periods to
6 PLAINTIFF, in violation of California's meal period laws.

7 68. Moreover, PLAINTIFF and the Class Members did not receive a timely,
8 uninterrupted second meal period when working shifts over ten (10) hours.

9 69. Based on information and belief, DEFENDANTS did not pay PLAINTIFF and the
10 Class Members an additional hour of wages at their regular rate(s) of compensation for each
11 workday a proper meal period was not provided. Based on further information and belief, when a
12 meal premium was paid, DEFENDANTS failed to include non-discretionary compensation into the
13 regular rate of compensation for purposes of determining the owed meal premium.

14 70. DEFENDANTS failed to provide PLAINTIFF and the Class Members with all
15 required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code
16 section 226.7, PLAINTIFF and the Class Members are entitled to one additional hour's pay at the
17 employee's regular rate of compensation for each day a meal period was missed, late or interrupted,
18 all in an amount to be proved at trial.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Provide Rest Periods or Compensation in Lieu Thereof** 21 **(Against All DEFENDANTS)**

22 71. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 72. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
24 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
25 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
26 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
27 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
28 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shift more than 6 hours up to
10 hours, and three 10-minute rest periods for shift of more than 10 hours up to 14 hours. (*Id.* at

1 1029). The rest period requirement obligates employers to permit and authorize employees to take
2 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
3 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
4 257. If the employer fails to provide any required rest period, the employer must pay the employee
5 one hour of pay at the employee's regular rate of compensation for each workday the employer did
6 not provide at least one legally required rest period, pursuant to Labor Code section 226.7.

7 73. PLAINTIFF and the Class Members did not receive compliant, timely 10-minute rest
8 periods every four (4) hours worked or major fraction thereof. Any purported rest periods would be
9 interrupted, cut short, on duty, and or late due to the nature and constraints of their job duties, and/or
10 commentary from DEFENDANTS pressuring them to skip breaks completely/take non-compliant
11 breaks. PLAINTIFF and the Class Members were pressured to complete their work such that rest
12 breaks were only taken once tasks were completed/as time permitted. DEFENDANTS had no policy
13 in place nor instruction as to the taking or timing of rest periods. For example, PLAINTIFF
14 frequently worked shifts longer than ten (10) hours without a single timely, uninterrupted rest
15 period.

16 74. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
17 period premium to PLAINTIFF and other Class Members for each workday in which there was a
18 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
19 premium was paid, DEFENDANTS failed to include non-discretionary compensation into the
20 regular rate of compensation for purposes of determining the owed rest premium.

21 75. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
22 hour of additional pay at the regular rate of compensation for each workday that a required rest
23 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
24 Order, plus pre-judgment interest.

25 **FIFTH CAUSE OF ACTION**
26 **Failure to Furnish Accurate Itemized Wage Statements**
27 **(Against All DEFENDANTS)**

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

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

4 (1) gross wages earned, (2) total hours worked by the employee,
5 except for any employee whose compensation is solely based on a
6 salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial
8 Welfare Commission, (3) the number of piece-rate units earned and
9 any applicable piece rate if the employee is paid on a piece-rate basis,
10 (4) all deductions, provided that all deductions made on written orders
11 of the employee may be aggregated and shown as one item, (5) net
12 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.

13 78. During the relevant time period, DEFENDANTS intentionally failed to provide
14 PLAINTIFF and the Class Members with complete and accurate wage statements in compliance
15 with Labor Code § 226, because they do not accurately reflect the total number of hours worked.

16 79. Notably, due to DEFENDANTS' unlawful policies of automatically deducting meal
17 periods, rounding time entries, failure to relieve employees of all duties for meal periods, and
18 uncompensated off-the-clock work, wage statements provided by DEFENDANTS fail to reflect the
19 true total hours PLAINTIFF and the Class Members worked, a requirement of Labor Code § 226.

20 80. Moreover, wage statements provided by DEFENDANTS to PLAINTIFF and other
21 Class Members failed to list the correct name and address of the legal entity that is the employer.

22 81. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and the
23 Class Members with proper, itemized wage statements as the wage statements provided by
24 DEFENDANTS did not accurately reflect the total hours worked per pay period and/or did not
25 accurately reflect the correct name and address of the legal entity that is the employer. Moreover,
26 because of the violations detailed above, including but not limited to, failing to provide meal and
27 rest break premiums, DEFENDANTS issued wage statements that failed to list the gross and net
28

1 wages earned during the pay period and the applicable rates of pay for all hours worked.

2 82. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
3 Members have suffered injury. DEFENDANTS' failure to accurately list all hours worked on all
4 wage statements caused confusion to PLAINTIFF and caused and continues to cause confusion to
5 Class Members over whether they received all wages owed to them. The absence of accurate
6 information on their wage statements has prevented earlier challenges to DEFENDANTS' unlawful
7 pay practices, will require discovery and mathematical computations to determine the amount of
8 wages owed, and will cause difficulty and expense in attempting to reconstruct time and pay records.
9 DEFENDANTS' conduct led to the submission of inaccurate information about wages and amounts
10 deducted from wages to state and federal government agencies. As a result, PLAINTIFF and the
11 Class Members are required to participate in this lawsuit and create more difficulty and expense for
12 PLAINTIFF and the Class Members from having to reconstruct time and pay records than if
13 DEFENDANT had complied with its legal obligations.

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

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

26 85. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and the Class
27 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
28 attorneys' fees, and costs of suit.

SIXTH CAUSE OF ACTION
Failure to Timely Pay All Wages Due Upon Separation of Employment
(Against All DEFENDANTS)

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

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

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

89. Based in information and belief, DEFENDANTS failed to timely pay PLAINTIFF and the Class Members all wages that were due and owing upon termination or resignation, as described herein. Upon separation of employment, PLAINTIFF and the Class Members’ final paychecks were not timely provided, and PLAINTIFF and the Class Members’ final paychecks, once provided, did not include all remuneration owed as it was devoid of, including but not limited to, all owed minimum wages, all owed overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates. Under Labor Code section 203, PLAINTIFF and the Class Members who no longer are employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’ pay, plus attorney’s fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
(Against All DEFENDANTS)

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

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

92. PLAINTIFF and the Class Members were improperly required to pay for business

1 expenses that are legally the responsibility of the employer, including but not limited to, cell
2 phone/data plan usage and charges, costs of using a personal vehicle to travel to and from a testing
3 site and associated mileage costs, and costs associated with the purchase and/or payment of
4 COVID19 testing.

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

9 94. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
10 Members have suffered injury in that they were not completely reimbursed as mandated by
11 California law.

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

15 **EIGHTH CAUSE OF ACTION**
16 **Unfair Competition**
17 **(Against All Defendants)**

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

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

27 98. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
28 California Labor Code, DEFENDANTS have gained a competitive advantage over other

1 comparable companies doing business in the State of California that comply with their obligations
2 to authorize or permit rest and meal periods or pay proper meal and rest period premiums in lieu
3 thereof, to provide complete and accurate itemized wage statements, to reimburse employees for all
4 business expenses, to pay all owed minimum and overtime wages, and to timely pay all wages due
5 upon separation of employment of their employees.

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

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

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

18 101. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

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

23 All current and former non-exempt employees that worked either
24 directly or via a staffing agency for DEFENDANTS in California at
25 any time from one year and sixty-five days prior to the filing of the
26 initial complaint through the present ("PAGA Period").

27 103. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
28 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations

1 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
2 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
3 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
4 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
5 Employees, as he was jointly employed by DEFENDANTS and is thereby affected by one or more
6 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
7 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
8 the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761

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

10 104. On January 5, 2022, PLAINTIFF, through his counsel, gave written notice by online
11 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
12 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
13 in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and correct copy of the
14 PAGA Letter also sent to DEFENDANTS via certified mail.

15 105. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
16 Labor Code and the applicable wage orders on behalf of himself, the State of California and other
17 Aggrieved Employees.

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

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

26 108. From one year prior to PLAINTIFF’s filing of the required PAGA notice with the
27 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
28 Labor Code sections 201-203, 204, 216, 223, 226, 226.7, 233, 234, 245-248.5, 432.3, 432.5, 432.7,

1 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, and all relevant
2 sections of the applicable Wage Orders, as to PLAINTIFF and Aggrieved Employees. These
3 violations subject DEFENDANTS to civil penalties as set forth in the foregoing statutes as well
4 as other provisions of the Labor Code, including without limitation, Labor Code sections 203,
5 210, 225.5, 226, 226.3, 256, 558, 558.1, 1174.5, 1197.1 and 2699.

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

12 110. Additionally, DEFENDANTS have violated the following Labor Code sections and
13 provisions of the applicable Wage Order as to PLAINTIFF and Aggrieved Employees.

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

18 112. Due to DEFENDANTS’ automatic meal break deductions, failure to relieve
19 employees of all duties and employer control during meal periods, time rounding, and other off-the-
20 clock work policies and practices described above, DEFENDANTS failed, and continue to fail, to
21 keep accurate and complete records as required by law, including but not limited to the following
22 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF
23 and other Aggrieved Employees began and ended each work period, time records of meal periods,
24 shift start times and end times, and accurate itemized wage statements.

25 113. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
26 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
27 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
28 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and

1 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
2 period during which the referenced statutes and Wage Order provisions were violated.¹

3 114. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
4 employer's refusal to pay wages due and payable and/or the denial of the validity of any claim to
5 wages due. DEFENDANTS violated and continue to violate this section by failing to pay
6 PLAINTIFF and other Aggrieved Employees for all hours worked at the proper wage rate and by
7 failing to pay an additional hour of pay for each meal/rest period not provided or that was otherwise
8 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
9 violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation
10 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
11 the statute provisions were violated.²

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

23 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
24 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
25 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
26 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).

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 and interest thereon, pursuant to Labor Code § 2699(f)-(g).

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

10 **117. Unlawful Inquiries into Salary History.** Labor code section 432.3 provides in part
11 “(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history
12 information, including compensation and benefits, about an applicant for employment.” Based on
13 information and belief, DEFENDANTS have a policy and/or practice of unlawfully asking
14 Aggrieved Employees to reveal their salary history when applying for employment with
15 DEFENDANTS. For example, when PLAINTIFF applied for employment with DEFENDANTS,
16 PLAINTIFF was required to fill out an application that requested, among other things, the following
17 information: Former employer's name, “Pay Rate” and reason for leaving the former employment
18 relationship. Based on information and belief, DEFENDANTS require other Aggrieved Employees
19 to disclose the same or similar information, in violation of Labor Code section 432.3.

20 **118.** Moreover, by requiring Aggrieved Employees to disclose prior salary information in
21 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
22 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
23 obtaining employment with DEFENDANTS, in violation of California law.

24 **119. Unlawful Agreements/ Unlawful Criminal History Inquiries.** Unlawful
25 Agreements. Labor Code section 432.5 provides that “no employer...shall require any employee or
26 applicant for employment to agree, in writing, to any term or condition which is known by such
27 employer...to be prohibited by law.” Based on information and belief, DEEFENDANTS required
28 PLAINTIFF and required/continue to require Aggrieved Employees to agree in writing to submit to

1 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
2 employment.

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

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

19 122. Based on information and belief, DEFENDANTS required Aggrieved Employees to
20 submit and/or agree to submit in writing to unlawful criminal background checks which failed to
21 abide by the requirements set forth in Cal. Civ. Code section 1786 *et. Seq.*, and 15 U.S.C. section
22 1681, *et. seq.*, as a condition of obtaining and/or holding employment.

23 123. Based on information and belief, DEFENDANTS required PLAINTIFF and other
24 Aggrieved Employees to agree in writing to a background check which failed to abide by the
25 requirements set forth in CA Civil Code section 1786, *et seq.*, and 15 U.S.C. section 1681, *et seq.*,
26 including but not limited to by failing to provide a clear and conspicuous disclosure, failing to
27 provide disclosures free of extraneous information, failing to provide a lawful purpose for the
28 background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,

1 failing to provide a way by which the individual could request a copy of the report, and failing to
2 properly obtain authorization or consent to such a background check, and thus was an unlawful
3 background check.

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

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

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

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

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

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

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

3 131. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave laws
4 including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick
5 leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick
6 leave due to DEFENDANTS' failure to account for actual hours worked (as a result of the rounding/
7 automatic deduction policies and practices for meal periods and shift start and end times/ or other
8 required off-the-clock work described herein), and/or failure to incorporate all forms of non-
9 discretionary remuneration into the sick pay calculation and/or failure to provide paid sick leave at
10 all.

11 132. DEFENDANTS failed to give PLAINTIFF and other Aggrieved Employees notice
12 of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code
13 section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick
14 leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
15 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

20 134. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
21 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
22 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
23 were entitled to the maximum number of hours accruable.

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

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

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

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

139. Under the provisions of PAGA and the following Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 233, 234, 245-248.5, 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, and all relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA penalties under Labor Code section 2699(f) for any violation of a Labor Code section without a specified civil penalty. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all in an amount to be proved.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of himself and the Class Members:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed as class representative;
3. For an order that counsel for PLAINTIFF be appointed as class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;

- 1 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
2 10. For pre-judgment interest as permitted by law;
3 11. For attorney's fees and costs reasonably incurred;
4 12. For civil penalties according to proof, including PAGA penalties (75% payable to the
5 LWDA and 25% payable to Aggrieved Employees); and
6 13. For such other and further relief that the Court deems just and proper.
7

8 Dated: April 20, 2022

CROSNER LEGAL, PC

9
10 By: 

11 Michael R. Crosner, Esq.
12 Zachary M. Crosner, Esq.
13 Blake R. Jones, Esq.
14 Jonathan Stilz, Esq.
15 Attorneys for Plaintiff,
16 MIGUEL ROMERO
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1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: April 20, 2022

CROSNER LEGAL, PC

5
6 By:  _____

7 Michael R. Crosner, Esq.
8 Zachary M. Crosner, Esq.
9 Blake R. Jones, Esq.
10 Jonathan Stilz, Esq.
11 Attorneys for Plaintiff,
12 MIGUEL ROMERO
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EXHIBIT

1



CROSNER LEGAL

Public Interest Rights

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January 5, 2022

VIA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Young C Kim
Agent for Service of Process for:
Hitex Dyeing & Finishing, Inc.
355 N. Vineland Ave
City of Industry, CA 91746

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency, Hitex Dyeing & Finishing, Inc.
Date: January 5, 2022
Subject: *Miguel Romero v. Hitex Dyeing & Finishing, Inc.*

Introduction

This office represents COMPLAINANT, Miguel Romero (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entity: Hitex Dyeing & Finishing, Inc., (hereinafter, this entity and its managing agents are referred to collectively as "EMPLOYER"). EMPLOYER may be contacted directly at the addresses listed above.

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

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

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

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

**The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT
AGGRIEVED EMPLOYEES AND EXEMPT AGGRIEVED EMPLOYEES**

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

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

COMPLAINANT is informed and believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code Section 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “a *natural person* who is an owner, director, officer, or managing agent of the employer.” The “managing

agent” definition mirrors that found in California’s punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, 1194 and 2802 as further described in detail below.

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

General Information

Hitex Dyeing & Finishing, Inc., owns, operates, or otherwise manages a warehouse in City of Industry, California where employees, among other tasks, dye textiles and deliver finished products to customers. EMPLOYER dyes textiles for many well-known names in the fashion industry. At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission (“IWC”) Wage Order. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER as a full-time non-exempt employee for approximately nine (9) years, until the separation of his employment in or about September 2021. COMPLAINANT typically worked in the shipping department at EMPLOYER’s warehouse in City of Industry, California. COMPLAINANT worked at least eight (8) hours to eleven (11) hours per day and sometimes up to twelve (12) hours per day. COMPLAINANT typically worked five (5) days per week.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wages for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT

AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the employee's regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES, and/or EXEMPT AGGRIEVED EMPLOYEES' salary history, (13) conducted and continues to conduct illegal background criminal and/or financial checks as a condition of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT EMPLOYEES' hire or maintaining their employment; and (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer or employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES, and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. The applicable IWC Wage Order, including but not limited to Wage Order 1-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

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

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

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

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

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

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

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

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

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

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

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

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take lawful meal breaks per California law. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute meal breaks. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and/or work through part or all their meal periods due to the nature and constraints of their job duties, and/or commentary from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. For example, COMPLAINANT’s scheduled shift regularly started at 7:00 am, but often took his meal break after 12:00 pm and sometimes as late as 2:00 pm or later. Moreover, COMPLAINANT was pressured to complete work tasks, including but not limited to, completing deliveries prior to taking a meal break and/or was at times, interrupted during a meal break with calls from supervisors or managers requesting the status of a delivery. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also unable to take timely, duty-free meal periods, and/or were interrupted during their purported meal periods.

Based on information and belief, EMPLOYER implemented an unlawful practice and/or policy in which COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were instructed by their supervisors to clock out for meal periods but to continue working. Based on further information and belief, EMPLOYER also implemented policies and practices that failed to relieve COMPLAINANT and NON-EXEMPT EMPLOYEES of all duties and EMPLOYER control during unpaid meal breaks.

Moreover, as explained above COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut short due to their need to complete work-related tasks. For example, COMPLAINANT regularly took his meal break after working more than five hours. On information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also unable to take timely thirty-minute meal periods due to the nature of their job, workload, and/or commentary from supervisors.

Based on information and belief, EMPLOYER regularly recorded NON-EXEMPT AGGRIEVED EMPLOYEES' meal breaks as if they were timely taken, even though a meal period was not actually afforded at this time and/or were otherwise not in accordance with California law.

Despite failing to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for these missed/unlawful meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive compliant meal periods. For example, COMPLAINANT was usually unable to clock out for meal periods because he was often making deliveries during his purported meal periods. Yet, EMPLOYER either logged a meal period for him and/or automatically deducted thirty minutes per shift irrespective of whether COMPLAINANT actually took a timely uninterrupted meal period. For instance, COMPLAINANT's timecards show that his start shift time and end times were time stamped by a computer or machine. However, his meal break's start and end times were handwritten. According to the handwritten entries, COMPLAINANT's meal breaks always started at precisely 11:30 am and ended at precisely 12:00 pm irrespective of the actual start time of COMPLAINANT's meal break or shift start time and irrespective of the total number of hours he worked. Based on information and belief, EMPLOYER had and continues to have a policy and/or practice of similarly logging NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods with a start time of 11:30 am and end time of 12:00 pm, irrespective of when the shift started, whether a meal period was actually afforded at this time and/or whether the meal period was interrupted or cut short.

EMPLOYER also failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal period start and end times. Based on further information and belief, EMPLOYER illegally rounded the start and end times of meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. For example, COMPLAINANT's wage statements show that his hours worked were rounded to the nearest quarter, half, or whole hour. Moreover, COMPLAINANT's timecards show that meal periods were consistently logged with a start time of 11:30 am and an end time of 12:00 pm, even when a meal period was not afforded at this time.

Based on information and belief, EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks.

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

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

Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal break. EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a second meal period despite COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES working over ten hours in a workday and thus being entitled to a second duty-free, uninterrupted, thirty-minute meal period before the end of the tenth hour of work. Per EMPLOYER's unlawful meal period policies and practices, EMPLOYER only provided a single meal period per shift, regardless of the number of hours worked, and that single meal period was non-compliant. For example, COMPLAINANT regularly worked over ten hours per shift, but was only provided with one meal period, and that single meal period was non-compliant. For example, on January 8, 2021, COMPLAINANT's timecard shows that his shift started at 6:49 am and ended at what appears to be 6:00 pm as indicated by the time stamp. There is also a handwritten entry indicating only a single meal period between 11:30 am and 12:00 pm. There is no record of a second meal period during this shift, even though COMPLAINANT worked over ten hours and was entitled to a second meal period.

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and the applicable Wage Order, including but not limited to IWC Wage Order No. 1-2001, section 11(A), (B) and (C). These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the

referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violation of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, including but not limited to No. 1-2001, section 12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shift more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code section 226.7; IWC Wage Order No. 1-2001, section 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided").

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

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

Any purported rest periods would be interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, and/or commentary from supervisors pressuring them to skip rest breaks completely and/or take non-compliant rest breaks. For example, COMPLAINANT was rarely afforded the opportunity to take a timely off-duty rest period and regularly worked through any purported rest periods. When COMPLAINANT worked in the warehouse, COMPLAINANT was not afforded a timely duty-

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 1-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

free rest period irrespective of the number of hours he worked. Likewise, when COMPLAINANT made deliveries, he was not afforded a timely duty-free rest period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once jobs were completed/as time permitted. For example, COMPLAINANT regularly worked shifts lasting over ten hours, but was not provided with a single compliant rest period.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest breaks.

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 1-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section §§ 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

³ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 1-2001, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deductions and time rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated off-the-clock work policies and/or practices and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

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

On information and belief, the work time reported by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES was rounded and automatically deducted for at least 30 minutes of wages every day they worked for EMPLOYER for meal breaks not taken, interrupted, or not relieved of all duties and EMPLOYER's control. Per EMPLOYER's policies and practices, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were required to clock out for at least thirty minutes per shift for purported meal periods, despite EMPLOYER's actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were working through part or all these meal periods.

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

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

COMPLAINANT alleges on information and belief that EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, results in understating actual compensable work time. Moreover, based on information and belief, EMPLOYER had and continues to have a continuous policy of paying COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for scheduled hours, rather than actual hours worked. For example, COMPLAINANT's timecards show that he consistently clocked into work several minutes before his scheduled shift time, sometimes more than ten minutes prior to his scheduled shift start time. Yet COMPLAINANT was only paid from the start of his scheduled shift time instead of his actual start time. Additionally, COMPLAINANT's wage statements show that EMPLOYER rounded his total hours worked to the nearest quarter, half, or whole hour. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices and only paying for scheduled hours resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or forty hours in a week.

Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform off-the-clock work. EMPLOYER required/requires COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to undergo Covid testing outside of their scheduled shift times without compensating COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time to/from the testing sites, time spent waiting for the tests to be performed, and time spent undergoing testing, resulting in significant off-the-clock work. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for off-the-clock work, which resulted in the underpayment of minimum wages and overtime wages owed as well as record-keeping violations.

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

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and the applicable Wage Order, including but not limited to Wage Order 1-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

⁴ See Lab. Code section 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 1-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; IWC Wage Order 1-2001, (and all applicable IWC Wage Orders) section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

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

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, start shift times and end times, failure to pay for actual hours worked, failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties during meal periods, and mandated off-the-clock work described above resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

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

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

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

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 1-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and the applicable Wage Order, including but not limited to Wage Order 1-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED

EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code Sections 245-248.5: Based on information and belief, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/ automatic deduction policies and practices for meal periods and shift start and end times/ or other required off-the-clock work described herein) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary shift differential pay and bonuses, and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

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

In addition, based on information and belief, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

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

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

⁵ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code section 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

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

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

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

EMPLOYER also unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

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

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

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

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

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

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

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

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

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

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

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

⁶ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

that is the employer. For example, the EMPLOYER's address listed on COMPLAINANT's wage statements is: "355 N. Vineland Ave." Based on information and belief, EMPLOYER provided NON-EXEMPT AGGRIEVED EMPLOYEES with wage statements that also failed to list the correct address of the legal entity that is the employer.

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

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

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by failing to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code § 210. Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

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

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

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

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

Thus, EMPLOYER paid COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all NON-

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

EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES on the regular pay day without regard to the timing requirements of Labor Code sections 201-202. For example, upon termination, COMPLAINANT was not provided with his final wages on the date of termination. Instead, EMPLOYER provided COMPLAINANT with his final wages a few days after the date of his termination.

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

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

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of

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

their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

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

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

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

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone and personal vehicle. For example, COMPLAINANT received calls and messages to his personal phone from managers and/or supervisors for work related purposes, including but not limited to, scheduling purposes and delivery updates. COMPLAINANT was not reimbursed for these business expenses.

EMPLOYER also required COVID testing. EMPLOYER did not reimburse COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES for the cost of undergoing covid testing, including but not limited to purchasing the test, and/or the cost of traveling and/or using a personal vehicle to and from a testing site.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT

AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their EMPLOYER and/or carrying out the duties assigned by EMPLOYER.

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

Unlawful Inquiries into Salary History

Labor code section 432.3 provides in part "(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment." Based on information and belief, EMPLOYER has a policy and/or practice of unlawfully asking NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to reveal their salary history when applying for employment with EMPLOYER. For example, when COMPLAINANT applied for employment with EMPLOYER, COMPLAINANT was required to fill out an application that requested, among other things, the following information: Former employer's name, "Pay Rate" and reason for leaving the former employment relationship. Based on information and belief, EMPLOYER required other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose the same or similar information, in violation of Labor Code section 432.3.

Moreover, by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose prior salary information in a written application for employment, EMPLOYER violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose their salary history as a condition of obtaining employment with EMPLOYER, in violation of California law.

Unlawful Agreements/ Unlawful Criminal and Financial Background Checks:

Unlawful Financial and Criminal Background Checks:

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15

U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

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

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

Based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.*, and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

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

Based on further information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

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

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

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

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, and the applicable Wage Order (including but not limited to Wage Order 1), as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC