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8 Attorneys for RODNEY JOHNSON,
on behalf of himself, the State of California, and others similarly
situated and aggrieved

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11
12 RODNEY JOHNSON on behalf of himself,
the State of California, and others similarly
13 situated and aggrieved,

14 Plaintiff,

15
16 vs.

17 SUSHI NOZAWA LLC, a Delaware limited
liability company; and DOES 1 to 100,
18 inclusive,

19 Defendants.

Case No.: 22STCV08949

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

1 Plaintiff RODNEY JOHNSON (“PLAINTIFF” or “PLAINTIFF JOHNSON”), an individual
2 on behalf of himself, the State of California, and all other Aggrieved Employees (as defined below),
3 hereby files this Complaint against Defendants SUSHI NOZAWA LLC, a Delaware limited liability
4 company; and DOES 1 to 100, inclusive, (collectively referred to herein as “DEFENDANTS”).
5 PLAINTIFF is informed and believes, and on the basis of that information and belief, alleges as
6 follows:

7 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

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

1 **THE PARTIES**

2 3. Defendant SUSHI NOZAWA, LLC is a Delaware limited liability company that, at
3 all relevant times, was authorized to do business within the State of California and is doing business
4 in the State of California.

5 4. DEFENDANTS and their managing agents own, operate, or otherwise manage
6 restaurants in California including but not limited to locations operating under the following names:
7 Sugarfish, Nozawa Bar, and KazuNori.

8 5. PLAINTIFF JOHNSON is, and at all relevant times, was an individual domiciled in
9 the State of California and a citizen of the State of California who worked as a full-time non-exempt
10 employee for DEFENDANTS in the State of California.

11 6. PLAINTIFF JOHNSON was employed by DEFENDANTS as a full-time non-
12 exempt employee during the relevant time period, until the separation of his employment in 2021.
13 PLAINTIFF typically worked in the kitchen at a Sugarfish restaurant that is owned and operated by
14 DEFENDANTS in Calabasas, California.

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

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

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

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

12 **JOINT LIABILITY**

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

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

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

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

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

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

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

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

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

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

23 **PAGA ALLEGATIONS**

18. PLAINTIFF brings this action under the PAGA, as a representative action on behalf

1 of himself, the State of California and Aggrieved Employees, regarding violations of the California
2 Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

3 All current and former employees that worked for DEFENDANTS at any
4 of its locations in California at any time from one year plus 65 days from
5 filing of the initial Complaint through the present (“PAGA Period”).

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

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

16 20. On January 3, 2022, PLAINTIFF JOHNSON, through his counsel, gave written
17 notice by online filing with the California Labor and Workforce Development Agency (“LWDA”)
18 informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the
19 allegations alleged in this Complaint (“PAGA Letter”).

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

22 22. The LWDA did not provide notice of its intention to investigate DEFENDANTS’

1 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
2 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
3 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.
4 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

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

8 FACTUAL ALLEGATIONS

9 24. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
10 employed by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised
11 control over PLAINTIFF and each of the Aggrieved Employees, and suffered and/or permitted them
12 to work.

13 25. PLAINTIFF was employed by DEFENDANTS in a non-exempt position during the
14 relevant period and was subject to one or of the Labor Code violations alleged herein. PLAINTIFF
15 typically worked in the kitchen at a Sugarfish restaurant that is owned and operated by
16 DEFENDANTS in Calabasas, California.

17 26. PLAINTIFF and other Aggrieved Employees worked in various positions, including
18 but not limited to cashiers, cooks, kitchen prep, managers, supervisors, waitstaff, and/or restaurant
19 staff and/or similar titles.

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

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

8 28. Moreover, PLAINTIFF and non-exempt Aggrieved Employees were consistently
9 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
10 interrupted and/or cut short due to their need to assist customers and/or cook or prep food and/or
11 complete other work-related tasks. For example, PLAINTIFF regularly took his meal break after
12 working more than five hours. On some days, PLAINTIFF was unable to take a meal break until
13 after working eight hours. On information and belief, other non-exempt Aggrieved Employees were
14 also unable to take timely thirty-minute meal periods due to the nature of their job, workload, and/or
understaffing.

15 29. Based on information and belief, DEFENDANTS further implemented policies and
16 practices that failed to relieve PLAINTIFF and other non-exempt Aggrieved Employees of all duties
17 and DEFENDANTS' control during unpaid meal breaks. For example, at times, PLAINTIFF's
18 supervisor required that PLAINTIFF clock out for a meal period but instructed him to continue
19 working.

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

1 31. Based on information and belief, DEFENDANTS had actual and/or constructive
2 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods owed
3 to PLAINTIFF and other non-exempt Aggrieved Employees, in violation of California's meal period
4 laws. Yet DEFENDANTS failed to take any action to remedy the situation in order to allow
5 PLAINTIFF and non-exempt Aggrieved Employees to take compliant, non-interrupted meal
6 periods.

7 32. DEFENDANTS also failed to keep accurate records of the start and end times of
8 PLAINTIFF's and non-exempt Aggrieved Employees' meal periods. Based on further information
9 and belief, DEFENDANTS illegally rounded the start and end times of employee meal periods
10 resulting in PLAINTIFF and other non-exempt Aggrieved Employees not being paid for all time
11 worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021)
12 11 Cal.5th 58. Moreover, DEFENDANTS regularly recorded PLAINTIFF's meal periods as if they
13 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.

14 33. Based on further information and belief, DEFENDANTS did not have a written meal
15 period policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for
16 the non-exempt Aggrieved Employees can be established by evidence that an employer adopted a
17 uniform corporate break policy that failed to give full effect to California law and the applicable
18 Wage Order requirements. The fact that employees may legally waive meal periods does not affect
19 this result. *Brinker, supra*, 53 Cal.4th 1004.

20 34. PLAINTIFF is further informed and believes and thereon alleges that
21 DEFENDANTS had actual and/or constructive knowledge that their time-rounding and auto-
22 deduction policies and practices resulted in the denial of meal periods owed to PLAINTIFF and
23 other non-exempt Aggrieved Employees, in violation of California's meal period laws.

35. Moreover, per DEFENDANTS' uniform policy and practice, non-exempt Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal break. DEFENDANTS failed to provide PLAINTIFF and non-exempt Aggrieved Employees with a second meal period despite consistently working over ten hours in a workday and thus being entitled to a second duty-free, uninterrupted, thirty-minute meal period before the end of the tenth hour of work. Per DEFENDANTS' unlawful meal period policies and practices, DEFENDANTS 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, PLAINTIFF regularly worked over ten hours per shift, but was only provided with one meal period, and that single meal period was non-compliant.

36. Upon information and belief, DEFENDANTS failed to pay PLAINTIFF 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. DEFENDANTS either failed to pay a meal period premium at all for each workday a proper meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

37. **Rest Periods.** DEFENDANTS did not properly authorize and provide PLAINTIFF and other non-exempt Aggrieved Employees with legally compliant 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.

38. PLAINTIFF and other non-exempt Aggrieved Employees were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per

1 California law. Any purported rest periods were consistently interrupted, cut short, on duty,
2 restricted to premises, and/or late due to the nature and constraints of PLAINTIFF's and other non-
3 exempt Aggrieved Employees' job duties, need to assist customers, understaffing, and/or
4 commentary from supervisors pressuring them to skip rest periods completely or take non-compliant
5 rest periods.

6 39. PLAINTIFF and other non-exempt Aggrieved Employees were pressured to
7 complete their work duties according to a designated schedule such that rest breaks were only taken
8 once jobs were completed/as time permitted. For example, PLAINTIFF regularly worked shifts
9 lasting over ten hours, but was not provided with a single compliant rest period.

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

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

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

1 43. **Failure to Provide Suitable Resting Facilities.** DEFENDANTS did not provide
2 PLAINTIFF and other non-exempt Aggrieved Employees with suitable resting facilities during their
3 hours of work, particularly during meal and/or rest periods. Based on information and belief,
4 PLAINTIFF and other non-exempt Aggrieved Employees were not allowed to sit in the restaurant
5 during working hours, nor were they provided with a break room. Moreover, DEFENDANTS did
6 not inform PLAINTIFF and other non-exempt Aggrieved Employees of their rights to suitable
7 resting facilities under California law.

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

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

21 46. **Unpaid Wages.** DEFENDANTS failed to compensate PLAINTIFF and other non-
22 exempt Aggrieved Employees for all hours worked, including all owed minimum and overtime
23 wages. As explained above, PLAINTIFF and the non-exempt Aggrieved Employees were
consistently unable to take off duty, thirty-minute, uninterrupted meal periods, often being forced

1 to work through part or all their meal periods due to understaffing, lack of relief workers, the nature
2 and constraints of their job duties and/or commentary from supervisors pressuring PLAINTIFF and
3 non-exempt Aggrieved Employees to take non-compliant meal periods or skip meal periods
4 completely, as alleged above.

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

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

20 49. Moreover, PLAINTIFF and other non-exempt Aggrieved Employees were required
21 to perform pre-shift and post-shift off-the-clock work. Based on information and belief,
22 DEFENDANTS did not compensate non-exempt Aggrieved Employees for time spent donning and
23 doffing personal protective equipment and/or uniforms during meal periods, rest periods, before the
start of a scheduled shift, and after completing a scheduled shift. For example, PLAINTIFF was

1 required to retrieve a chef's coat and chef's hat from DEFENDANTS' premises upon arriving to
2 work. After changing into the required uniform, PLAINTIFF clocked in to work. Similarly,
3 PLAINTIFF removed his chef's coat and hat after clocking out of work at the end of a shift. As
4 such, time spent changing in and out of uniform and/or protective gear was not recorded and not
5 compensated, and resulted in unpaid minimum and overtime wages, as well as record-keeping
6 violations.

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

12 51. Based on information and belief, DEFENDANTS failed to pay non-exempt
13 Aggrieved Employees' twice their regular rate of pay for time worked beyond twelve (12) hours per
14 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
15 work week, in violation of California's minimum and overtime laws.

16 52. DEFENDANTS' automatic deduction and time rounding policies and practices for
17 meal periods, start shift times and end times, and mandated pre-shift and post shift off-the-clock
18 work, and other off-the-clock work (including but not limited to off-the-clock donning and doffing)
19 described above resulted in the failure to account for all hours worked and thus the denial of
20 minimum wages as well as overtime wages to PLAINTIFF and non-exempt Aggrieved Employees
21 who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

22 53. Based on further information and belief, DEFENDANTS failed to properly blend
23 multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation
and underpayment of overtime wages owed to PLAINTIFF and other non-exempt Aggrieved

1 Employees.

2 54. Based on further information and belief, DEFENDANTS also failed to pay the
3 correct overtime rate to non-exempt Aggrieved Employees due to DEFENDANTS' failure to
4 incorporate all forms of non-discretionary remuneration, including but not limited to, shift
5 differential pay, bonus pay and/or other non-discretionary pay, into the regular rate of pay for
6 purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment
7 of overtime wages owed to PLAINTIFF and other non-exempt Aggrieved Employees.

8 55. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
9 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
10 required by Labor Code section 1174, 1198, 1199, and the applicable Wage Order, including but
11 not limited to Wage Order 5-2001, section 7. DEFENDANTS failed, and continue to fail, to keep
12 accurate and complete payroll records as required by law, including but not limited to the following
13 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF
14 and other non-exempt Aggrieved Employees began and ended each work period, time records of
meal periods, and accurate itemized wage statements.

15 56. DEFENDANTS have failed and continue to fail to keep accurate and complete
16 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
17 break deductions, failure to relieve PLAINTIFF and non-exempt Aggrieved Employees of all duties
18 and employer control during unpaid meal periods, failure to record the true start and end times of
19 meal periods, shift start times and shift end times, and other off-the-clock work policies and practices
20 described herein.

21 57. **Failure to Provide Suitable Seating.** Per section 14(A-B) of all applicable IWC
22 Wage Orders, employees shall be provided with suitable seats when the nature of the work
23 reasonably permits the use of seats and when they are not actively engaged in the work duties that

1 would not permit them to be seated.

2 58. DEFENDANTS failed to provide PLAINTIFF and other non-exempt Aggrieved
3 Employees with suitable seating and when such employees were not engaged in duties which
4 required them to stand, no seating was placed in reasonable proximity to their workstations.

5 59. Moreover, the nature of the work reasonably permitted the use of seats for at least
6 part of the time that PLAINTIFF and other non-exempt Aggrieved Employees were working. Lastly,
7 there were periods of time when PLAINTIFF and other non-exempt Aggrieved Employees were not
8 engaged in active duties of their employment, yet there were no suitable seats in reasonable
9 proximity to the work area and use of seats would not interfere with the performance of their duties.

10 60. PLAINTIFF and the other non-exempt Aggrieved Employees worked in various
11 positions. The nature of their work reasonably permitted the use of seats. However,
12 DEFENDANTS failed to provide suitable seating in reasonable proximity to PLAINTIFF and the
13 other non-exempt Aggrieved Employees' work areas in violation of the applicable Wage Order and
14 in violation of Labor Code section 1198 and 1199.

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

20 62. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
21 recordkeeping provisions, minimum wages and overtime wages, seating violations, and resting
22 facilities violations, result in separate violations of sections 1198 and 1199.

23 63. **Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
Code section 216 by failing to pay PLAINTIFF and non-exempt Aggrieved Employees for all hours

1 worked at the proper wage rate and by failing to pay PLAINTIFF and non-exempt Aggrieved
2 Employees an additional hour of pay for each meal/rest period not provided or that was otherwise
3 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

4 64. **Statutory Wage Violations.** As described above, DEFENDANTS willfully and
5 systematically denied PLAINTIFF and other non-exempt Aggrieved Employees minimum and
6 overtime wages for all hours worked which resulted in the payment of less than the statutorily
7 required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory
8 wages, including, but not limited to, overtime wages and minimum wages, to which they were
9 entitled to under California law. Thus, DEFENDANTS violated Labor Code section 223 by paying
10 PLAINTIFF and other non-exempt Aggrieved Employees lower wages than those they were entitled
11 to while purporting that PLAINTIFF and other non-exempt Aggrieved Employees were properly
12 paid.

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

16 66. DEFENDANTS shifted the cost of doing business onto PLAINTIFF and Aggrieved
17 Employees by requiring them to pay for DEFENDANTS' business expenses, including but not
18 limited to, use of their personal mobile phone and data usage, as well as costs associated with the
19 purchase and or maintenance of uniforms/clothing and/or protective gear including but not limited
20 to face masks and/or gloves. For example, PLAINTIFF received work related calls and messages to
21 his personal phone, purchased and downloaded a payroll application onto his personal phone in
22 order to view his schedule, and purchased his own face masks.

23 67. DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees with
full reimbursement for all reasonable expenses associated with carrying out their duties and required

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

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

11 **69.** Separately, and independent of the above allegation, based on information and belief,
12 DEFENDANTS issued wage statements that further violate Labor Code section 226(a) to
13 PLAINTIFF and Aggrieved Employees, by among other things, failing to list the correct name and
14 address of the legal entity that is the employer.

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

71. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF

1 and non-exempt Aggrieved Employees on notice of their paid sick leave rights – or thereby putting
2 their entitlement to sick leave in a Labor Code section 2810.5 notice. Additionally, DEFENDANTS
3 failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other
4 non-exempt Aggrieved Employees on their wage statements or other written statement. Moreover,
5 based on information and belief, DEFENDANTS failed to maintain accurate records of used sick
6 leave and the balance of paid sick leave.

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

13 73. As such, DEFENDANTS unlawfully retained and continue to retain paid sick leave
14 that should have been paid and was not as a result of their failure to properly institute a lawful paid
15 sick leave program. These unlawful practices and policies violate California’s sick leave laws, Labor
16 Code section 245-248.5.

17 74. **Violation of Labor Code section 351 and 352:** Based on information and belief,
18 DEFENDANTS failed to ensure that non-exempt Aggrieved Employees received the full amount
19 of gratuities left for them by patrons, in that DEFENDANTS and their agents would collect and/or
20 take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on
21 further information and belief, DEFENDANTS also failed and continue to fail to keep accurate
22 records of all tips left for non-exempt Aggrieved Employees, in violation of Labor Code Section
23 353.

75. **Untimely Payment of Final Wages.** Based on information and belief,

1 DEFENDANTS failed to timely pay Aggrieved Employees all wages that were due and owing upon
2 termination or resignation. Labor Code sections 201 and 202, together require employers to pay all
3 wages immediately upon discharge and within 72 hours of an employees' resignation. Based on
4 information and belief, DEFENDANTS provide final wages to Aggrieved Employees on the regular
5 pay day without regard to the timing requirements of Labor Code section 201-202.

6 76. Upon separation of employment, Aggrieved Employees' final paychecks were not
7 timely provided and/or were not timely provided with all owed vacation pay. Moreover, non-exempt
8 Aggrieved Employees' final paychecks, once provided, did not include all wages owed as they were
9 devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages,
10 vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

11 77. These violations subject DEFENDANTS to civil penalties under Labor Code section
12 203, 210, and/or 256.

13 **Unlawful Agreements-Unlawful Criminal and Financial Background Checks:**

14 Unlawful Financial and Criminal Background Checks

15 78. Based on information and belief, DEFENDANTS required non-exempt Aggrieved
16 Employees and exempt Aggrieved Employees to agree in writing to unlawful conditions of
17 employment including but not limited to unlawful criminal and/or financial checks.

18 79. Based on information and belief, DEFENDANTS ordered unlawful financial credit
19 checks on non-exempt Aggrieved Employees and exempt Aggrieved Employees, in violation of
20 Labor Code section 1024.5, and required non-exempt Aggrieved Employees and exempt Aggrieved
21 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
22 employment, in violation of California and Federal law, which results in a further violation of Labor
23 Code section 432.5.

80. Based on information and belief, DEFENDANTS required non-exempt Aggrieved

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

5 81. Based on information and belief, DEFENDANTS required non-exempt Aggrieved
6 Employees and exempt Aggrieved Employees to agree in writing to a background check which
7 failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C.
8 section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous
9 disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful
10 purpose for the background check, failing to provide a summary of rights under the ICRAA and/or
11 the FRCA, failing to provide a way by which the individual can request a copy of the report, and
12 failing to properly obtain authorization or consent to such a background check, and thus was an
unlawful background check.

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

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

21 84. Based on further information and belief, DEFENDANTS knew that requiring non-
22 exempt Aggrieved Employees and exempt Aggrieved Employees to agree to unlawful criminal
23

1 and/or financial background checks as a condition of obtaining and/or holding employment was
2 unlawful.

3 85. By requiring non-exempt Aggrieved Employees and exempt Aggrieved Employees
4 sign off on the illegal background and financial checks, DEFENDANTS also violated Labor Code
5 section 432.5.

6 Unlawful Inquires into Criminal History

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

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

17 88. As such, non-exempt Aggrieved Employees and exempt Aggrieved Employees
18 continue to be subject to various unlawful provisions as a condition of employment.

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

21 **FIRST CAUSE OF ACTION**

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

23 **2698, ET SEQ.**

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

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

Failure to Keep Accurate Records

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

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

93. DEFENDANTS’ failure to keep “accurate and complete” payroll records for PLAINTIFF and other non-exempt Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. 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.¹

¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 5-2001 (and all applicable wage orders), § 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the

1 **Meal Period Violations**

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

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

16 96. Employers covered by any and all applicable IWC Wage Orders have an obligation
17 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
18 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
19 presumed that no meal period was provided. IWC Wage Order 5-2001 and all applicable IWC
20 Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th
21 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given

22 _____
23 employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for
each underpaid employee for each pay period during which the employee was underpaid") (emphasis added).

1 shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty
2 and no meal period was provided”).

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

10 98. DEFENDANTS have a consistent policy and/or practice of not providing lawful
11 meal periods to PLAINTIFF and all non-exempt Aggrieved Employees and/or providing
12 compensation in lieu thereof. As explained herein, PLAINTIFF and other non-exempt Aggrieved
13 Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted first and
14 second meal periods, often being forced to take late meal periods, interrupted meal periods and/or
15 work through part or all their purported meal periods. Moreover, PLAINTIFF and non-exempt
16 Aggrieved Employees were instructed by their supervisors to clock out for meal periods but to
17 continue working. As such, DEFENDANTS failed to keep accurate records of the start and end
18 times of PLAINTIFF’s and non-exempt Aggrieved Employees’ meal period start and end times.

19 99. Based on information and belief, DEFENDANTS rounded the start and end time of
20 employees’ meal periods and/or automatically deducted thirty minutes per shift despite having
21 actual and/or constructive knowledge that PLAINTIFF and other non-exempt Aggrieved
22 Employees did not receive compliant meal periods.

23 100. DEFENDANTS also failed to pay premiums for missed/otherwise unlaw meal
periods in violation of California law or failed to pay the proper meal period premium for failure

1 to incorporate all non-discretionary remuneration including but not limited to, shift differential pay,
2 bonuses, and/or other non-discretionary compensation into the regular rate or compensation for
3 purposes of calculating the owed meal period premium.

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

9 **Rest Period Violations**

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

103. As explained above, DEFENDANTS did not properly authorize and provide

1 PLAINTIFF and other non-exempt Aggrieved Employees with legally compliant rest periods at a
2 rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are
3 provided in the middle of the work period, as required by law. Any purported rest periods were
4 consistently interrupted, cut short, on duty, restricted to premises and/or late.

5 104. Moreover, based on information and belief, DEFENDANTS failed to pay
6 PLAINTIFF and other non-exempt Aggrieved Employees an additional hour of pay at
7 PLAINTIFF's and other non-exempt Aggrieved Employees' regular rates of compensation for each
8 missed or improper rest period. DEFENDANTS also failed to pay the proper rest period premium
9 for failure to incorporate all non-discretionary remuneration including but not limited to, shift
10 differential pay, bonuses, and/or other non-discretionary compensation into the regular rate of
11 compensation for purposes of calculating the owed rest period premium.

12 105. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
13 IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), §12. These violations subject
14 DEFENDANTS to civil penalties under Labor Code §§ 558 and 2699, and Wage Order 5-2001,
15 §20.

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

17 106. Per section 13 of all applicable IWC Wage Orders, employees shall be provided with
18 suitable resting facilities. Section 13(B) of the applicable Wage Order provides: "Suitable resting
19 facilities shall be provided in an area separate from the toilet rooms and shall be available to
20 employees during work hours."

21 107. As explained above, DEFENDANTS did not provide PLAINTIFF and non-exempt
22 Aggrieved Employees with suitable resting facilities during their hours of work, particularly during
23 meal and/or rest periods. As such, DEFENDANTS violated and continue to violate the applicable
Wage Order, including but not limited to IWC Wage Order 5-2001, section 13(B) and the

1 California Labor Code, including but not limited to section 1198.

2 **Minimum and Overtime Wage Violations**

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

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

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

22 111. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,

1 and unpaid overtime wages owed to PLAINTIFF and those non-exempt Aggrieved Employees that
2 worked more than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid
3 double time wages.

4 112. Moreover, based in information and belief, DEFENDANTS failed to pay proper
5 overtime rates to PLAINTIFF and non-exempt Aggrieved Employees due to DEFENDANTS'
6 failure to incorporate all forms of non-discretionary compensation, including but not limited to,
7 shift differential pay and/or non-discretionary bonus pay, and/or other non-discretionary pay into
8 the regular rate of compensation for purposes of calculating the owed overtime rate resulting in the
underpayment of overtime wages owed.

9 113. Based on information and belief, DEFENDANTS had actual or constructive
10 knowledge that its unlawful policies and practices resulted in the underpayment of minimum wages
11 and overtime wages owed to PLAINTIFF and other non-exempt Aggrieved Employees, in violation
12 of California's minimum and overtime wage laws.

13 114. These violations subject DEFENDANTS to civil penalties under Labor Code
14 sections 218.5, 558, 558.1, 1197.1, 2699, and Wage Order 5-2001 (and all applicable IWC Wage
15 Orders), section 20.

16 **Statutory Wage Violations**

17 115. California Labor Code section 223 makes it unlawful for an employer to secretly pay
18 wages lower than required by statute while purporting to pay legal wages. As described above,
19 DEFENDANTS willfully and systematically denied PLAINTIFF and non-exempt Aggrieved
20 Employees of all earned minimum and overtime compensation for all hours worked which resulted
21 in the payment of less than statutorily required wages. DEFENDANTS acted with the intent to
22 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, DEFENDANTS paid

1 PLAINTIFF and other non-exempt Aggrieved Employees lower wages than those they were
2 entitled to while purporting that PLAINTIFF and other non-exempt Aggrieved Employees were
3 properly paid. As a result, PLAINTIFF and other non-exempt Aggrieved Employees are entitled to
4 recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-
5 (g).

6 **Refusal to Make Payment**

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

15 **Seating Violations**

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

19 118. IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), Section 14(A-B)
20 provides:

21 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
22 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 (A) All working employees shall be provided with suitable seats when the nature of the
2 work reasonably permits the use of seats.

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

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

11 120. As alleged herein, the nature of PLAINTIFF's and other non-exempt Aggrieved
12 Employees' work reasonably permitted the use of seats, but no such seats were provided. Moreover,
13 there were periods of time when PLAINTIFF and other non-exempt Aggrieved Employees were
14 not engaged in active duties of their employment, yet there were no suitable seats in reasonable
15 proximity to the work area even when the use of seats would not interfere with the performance of
16 their duties.

17 121. As such, DEFENDANTS violated and continue to violate Wage Order 5-2001
18 section 14(A)-(B) and Labor Code sections 1198 and 1199 by failing to provide suitable seats to
19 PLAINTIFF and non-exempt Aggrieved Employees, subjecting DEFENDANTS to civil penalties
20 under Labor Code sections 1199 and 2699.

21 **Business Expense Violations**

22 122. California law requires employers to indemnify their employees for all necessary
23 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable

1 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
2 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’
3 fees incurred by the employee enforcing the rights granted by this section.”

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

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

18 125. At all relevant times, PLAINTIFF and Aggrieved Employees were improperly
19 required to provide and maintain work tools that are supposed to be the responsibility of the
20 employer, including but not limited to, use of a personal cell phone/data plan charges incurred as a
21 result of being required to use their personal cell phones/other communication devices on the job
22 and costs associated with the purchase and maintenance of work uniforms/clothing and protective
23 gear including but not limited to face masks and/or gloves.

126. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved

1 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
2 DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

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

7 **Wage Statement Violations**

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

17 129. Due to violations detailed above, including but not limited to, DEFENDANTS'
18 failure to pay regular and overtime wages for all hours worked, failure to pay all sick leave wages
19 at the proper rates, and failure to provide meal and rest break premiums, DEFENDANTS have
20 violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and non-exempt
21 Aggrieved Employees with accurate, itemized wage statements that listed the earned gross and net
22 wages earned and the correct applicable rates of pay for all hours worked. Moreover, wage
statements issued by DEFENDANTS failed to list the "total hours worked" by the PLAINTIFF

1 and non-exempt Aggrieved Employees (by virtue of the automatic deduction for meal periods and
2 time-rounding policies and practices and other off-the-clock work policies and practices, all
3 described in greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure
4 to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code
5 Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

6 130. DEFENDANTS' failure to accurately list all hours worked on all wage statements
7 caused confusion to PLAINTIFF and caused and continues to cause confusion to other non-exempt
8 Aggrieved Employees over whether they received all wages owed to them.

9 131. As a result, PLAINTIFF and other non-exempt Aggrieved Employees have suffered
10 injury as they could not easily determine whether they received all wages owed to them and whether
11 they were paid for all hours worked.

12 132. Separately, and independent of the above allegation, based on information and belief,
13 DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that further
14 violate Labor Code section 226(a), by failing to list the correct name and address of the legal entity
15 that is the employer.

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

19 **Standard Conditions of Labor Violations**

20 134. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
21 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
22 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
23

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

1 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
2 violations with respect to meal periods, rest periods, record keeping provisions, suitable seating,
3 suitable resting facilities, and minimum/overtime wages result in separate violations of sections
4 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1
5 and 2699.

6 **Sick Leave Violations**

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

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

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

23 138. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all non-

1 exempt Aggrieved Employees, permitting the presumption that PLAINTIFF and all non-exempt
2 Aggrieved Employees were entitled to the maximum number of hours accruable.

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

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

9 141. On information and belief, PLAINTIFF alleges that all of these practices were
10 experienced and continue to be experienced by other non-exempt Aggrieved Employees.

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

13 **Violation of Labor Code section 351-353:**

14 143. Labor Code Section 351 prohibits employers and their agents from sharing in or
15 keeping any portion of a gratuity left for or given to one or more employees by a
16 patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from
17 using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
18 mandates employers keep accurate records of all gratuities received.

19 144. Based on information and belief, DEFENDANTS failed to ensure that non-exempt
20 Aggrieved Employees received all gratuities left for them by patrons, in that DEFENDANTS and
21 would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code
22 Section 351. Based on further information and belief, DEFENDANTS also failed and continue to
23 fail to keep accurate records of all tips left for non-exempt Aggrieved Employees, in violation of
Labor Code Section 353.

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1 **Unlawful Agreements- Unlawful Criminal and Financial Background Checks:**

2 149. Labor Code section 432.5 provides that “no employer...shall require any employee
3 or applicant for employment to agree, in writing, to any term or condition which is known by such
4 employer...to be prohibited by law.” Based on information and belief, DEEFENDANTS required
5 non-exempt Aggrieved Employees and exempt Aggrieved Employees to agree in writing to submit
6 to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
7 employment.

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

20 151. Based on information and belief, DEFENDANTS ordered unlawful financial credit
21 checks on non-exempt Aggrieved Employees and exempt Aggrieved Employees, in violation of
22 Labor Code section 1024.5, and required them to provide ongoing written consent to the unlawful
23 credit checks as a condition of employment, in violation of California and Federal law, which
results in a violation of Labor Code section 432.5.

1 152. Based on information and belief, DEFENDANTS required non-exempt Aggrieved
2 Employees and exempt Aggrieved Employees to submit and/or agree to submit in writing to
3 unlawful criminal background checks as a condition of obtaining and/or holding employment in
4 violation of the ICRAA and the FCRA as alleged above.

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

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

15 155. By requiring that PLAINTIFF and other non-exempt Aggrieved Employees and
16 exempt Aggrieved Employees sign off on the illegal background and/or financial checks,
17 DEFENDANTS violated Labor Code section 432.5.

18 Unlawful Inquires into Criminal History

19 156. Labor Code section 432.7 prohibits an employer from asking applicants about past
20 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
21 information and belief, DEFENDANTS asked PLAINTIFF and non-exempt Aggrieved Employees
22 and exempt Aggrieved Employees about arrests not resulting in convictions on its employment
23 application, in violation of California law.

 157. Upon information and belief, DEFENDANTS, in violation of California law,

1 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
2 (“FEHA”), asked PLAINTIFF and non-exempt Aggrieved Employees and exempt Aggrieved
3 Employees about convictions prior to extending an offer of employment and/or otherwise
4 impermissibly inquired into criminal history on its employment application in violation of
5 California law.

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

12 159. As such, PLAINTIFF and non-exempt Aggrieved Employees and exempt Aggrieved
13 Employees continue to be subject to various unlawful provisions as a condition of employment.

14 160. Under the provisions of PAGA and the above mentioned Labor Code sections,
15 including but not limited to Labor Code sections 201, 202, 203, 210, 225.5, 226, 226.3, 226.7, 245,
16 247.5, 248, 248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1197, 1197.1, 1198,
17 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all interpretations of
18 these laws by California Courts and administrative bodies, as well as any other law that is
19 enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 20 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
21 relevant California Labor Code provisions listed herein only if permitted by the
22 PAGA statute, pursuant to Labor Code section 2699(a); and
- 23 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
violations without a civil penalty recoverable under the PAGA, all in the default

1 amounts provided by Labor Code section 2699(f).

2 c. The proper measure of penalties under PAGA is the number of violations,
3 whether those violations were committed as against Plaintiff or any Aggrieved
4 Employee, whether a party to this action or not.

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of himself,
9 the State of California, and the Aggrieved Employees:

- 10 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
11 25% payable to Aggrieved Employees);
- 12 2. For reasonable attorney's fees and costs of suit; and
- 13 3. For such other and further relief that the Court deems just and proper.

14 Dated: March 14, 2022

CROSNER LEGAL, P.C.

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16 _____
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