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8 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 JULIO SANDOVAL on behalf of himself, the
State of California, and others similarly situated
13 and aggrieved,

14 Plaintiff,

15
16 vs.

17 P.F. CHANG'S CHINA BISTRO, INC., a
Delaware Corporation; P.F. CHANG'S III,
18 LLC, an Arizona Limited Liability Company;
and DOES 1 to 100, inclusive,
19

20 Defendants.

Case No.: **22STCV13060**

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

1 Plaintiff JULIO SANDOVAL (“PLAINTIFF” or “PLAINTIFF SANDOVAL”), an
2 individual on behalf of himself, the State of California, and all other Aggrieved Employees (as
3 defined below), hereby files this Complaint against Defendants P.F. CHANG’S CHINA BISTRO,
4 INC., a Delaware Corporation; P.F. CHANG’S III, LLC, an Arizona Limited Liability Company;
5 and DOES 1 to 100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF
6 is informed and believes, and on the basis of that information and belief, alleges as 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 restaurants 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).

24 **THE PARTIES**

25 3. PLAINTIFF SANDOVAL is, and at all relevant times, was an individual domiciled
26 in the State of California and a citizen of the State of California who worked as a full-time non-
27 exempt employee for DEFENDANTS in the State of California.

1 4. PLAINTIFF SANDOVAL was employed by DEFENDANTS as a full-time non-
2 exempt employee in a meat prepping position (or similar title) at one of DEFENDANTS' restaurants
3 in Santa Monica, California. PLAINTIFF was employed by DEFENDANTS for approximately 14
4 years until in or around March 2021.

5 5. Defendant P.F. CHANG'S CHINA BISTRO, INC. is a Delaware corporation that, at
6 all relevant times, was authorized to do business within the State of California and is doing business
7 in the State of California.

8 6. Defendant P.F. CHANG'S III, LLC is an Arizona limited liability company that, at
9 all relevant times, was authorized to do business within the State of California and is doing business
10 in the State of California.

11 7. DEFENDANTS own and operate an Asian restaurant concept, which according to
12 its website, operate over 210 U.S. restaurants, including airport locations, plus over 95 restaurants
13 in more than 25 countries across the globe.¹

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

20 9. PLAINTIFF is further informed and believes that, at all relevant times, each
21 defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
22 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
23 predecessor in interest of some or all of the other DEFENDANTS, and was engaged with some or
all of the other DEFENDANTS in a joint enterprise for profit, and bore such other relationships to
some or all of the other DEFENDANTS so as to be liable for their conduct with respect to the

¹ See
<https://www.pfchangs.com/global/overview#:~:text=Today%2C%20P.F.,25%20countries%20across%20the%20globe>
. Last visited on April 14, 2022.

1 matters alleged in this Complaint. PLAINTIFF is further informed and believes and thereon alleges
2 that each defendant acted pursuant to and within the scope of the relationships alleged above, and
3 that at all relevant times, each defendant knew or should have known about, authorized, ratified,
4 adopted, approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

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

11 **JOINT LIABILITY**

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

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

1 person, may be liable for violations of the California Labor Code as to that person.

2 13. PLAINTIFF is informed and believes and thereon alleges that at all relevant times,
3 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
4 human resources. Among other things, PLAINTIFF is informed and believes that: (1) there is
5 common ownership in, and financial control, in DEFENDANTS' restaurant concepts, including but
6 not limited to the P.F. Chang's Bistro restaurant located in Santa Monica, California where
7 PLAINTIFF worked; (2) DEFENDANTS utilize common management, who have control over the
8 day-to-day operations and employment matters, including the power to hire and fire, set schedules,
9 issue employee policies, and determine rates of compensation across its restaurants in California,
10 including but not limited to the P.F. Chang's Bistro's Santa Monica, CA location; (3)
11 DEFENDANTS utilize the same policies and procedures for all California employees, including
12 issuing the same employee handbooks and other form agreements; (4) DEFENDANTS use at least
13 some of the same Human Resources personnel and attorneys to oversee employment matters; and,
14 (6) DEFENDANTS share employees.

15 14. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
16 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
17 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
18 DEFENDANTS exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
19 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
20 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
21 Employees. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
22 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
23 time-keeping practices, meal and rest periods, and other working conditions that were distributed
to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS
uniformly compensated and controlled the wages of PLAINTIFF and the Aggrieved Employees in
a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the Aggrieved
Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS

1 collectively retained the right to terminate PLAINTIFF and the Aggrieved Employees' employment
2 with or without cause. Upon information and belief, DEFENDANTS further collectively
3 represented to PLAINTIFF and the Aggrieved Employees in writing the details of their
4 compensation, and the manner in which they were to take meal and rest periods, the procedures
5 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
6 to PLAINTIFF and the Aggrieved Employees by which DEFENDANTS collectively would
evaluate the wage rates of PLAINTIFF and the Aggrieved Employees.

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

11 16. 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
with regard to the other Aggrieved Employees.

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

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

PAGA ALLEGATIONS

21 19. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
22 of himself, the State of California and Aggrieved Employees, regarding violations of the California

1 Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

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

6 20. 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
745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
14 the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

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

16 21. On February 4, 2022, PLAINTIFF SANDOVAL gave written notice by online filing
17 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
18 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
19 in this Complaint (“PAGA Letter”).

20 22. The PAGA Letter was sent to DEFENDANTS via certified mail and outlined
21 PLAINTIFF’s claims for violations of the California Labor Code and the applicable wage orders on
22 behalf of himself, the State of California and other Aggrieved Employees.

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

1 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

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

5 FACTUAL ALLEGATIONS

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

10 26. PLAINTIFF was employed by DEFENDANTS in a non-exempt position during the
11 relevant period and was subject to one or more of the Labor Code violations alleged herein.
12 PLAINTIFF worked in a meat prepping position at one of DEFENDANTS' restaurant locations in
13 Santa Monica, California. PLAINTIFF worked for DEFENDANTS for approximately 14 years until
14 in or around March 2021. PLAINTIFF worked as a full-time non-exempt employee and was paid
15 on an hourly basis.

16 27. **Meal Periods.** PLAINTIFF and other non-exempt Aggrieved Employees regularly
17 worked shifts of five and one half (5 ½) hours or more and were entitled to at least one thirty-minute
18 uninterrupted meal break. However, PLAINTIFF and other non-exempt Aggrieved Employees did
19 not receive legally compliant thirty-minute meal periods.

20 28. PLAINTIFF and non-exempt Aggrieved Employees were consistently unable to take
21 timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
22 periods, interrupted meal periods and/or work through part or all their meal periods due to the nature
23 and constraints of their job duties, and/or commentary from supervisors pressuring them to take
non-compliant meal periods and/or skip meal periods completely because DEFENDANTS'
restaurants were busy, and based on DEFENDANTS' expectations, there was no time to take a meal
period. Based on information and belief, non-exempt Aggrieved Employees were instructed by their
supervisors to clock out for meal periods but to continue working due to the need for non-exempt

1 Aggrieved Employees to complete their job duties.

2 29. Based on further information and belief, non-exempt Aggrieved Employees were
3 consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their
4 meal periods interrupted and/or cut short and/or were required to work through all or part of the
5 purported meal period due to commentary from supervisors, understaffing, and/or need to complete
6 assigned tasks or job duties. Based on further information and belief, DEFENDANTS implemented
7 policies and/or practices that failed to relieve non-exempt Aggrieved Employees of all duties and
8 DEFENDANTS' control during unpaid meal periods.

9 30. Moreover, based on information and belief, per DEFENDANTS' policy and practice,
10 non-exempt Aggrieved Employees who worked shifts of more than ten hours did not receive a
11 second legally compliant thirty-minute meal period before the end of the tenth hour of work.

12 31. Based on information and belief, despite failing to provide lawful meal periods,
13 DEFENDANTS implemented a policy and/or practice of rounding and automatically deducting at
14 least thirty minutes per shift for these missed/unlawful meal periods, despite having actual and/or
15 constructive knowledge that PLAINTIFF and other non-exempt Aggrieved Employees did not
16 receive compliant meal periods.

17 32. DEFENDANTS failed to keep accurate records of the start and end times of
18 PLAINTIFF's and non-exempt Aggrieved Employees' meal period start and end times. Based on
19 further information and belief, DEFENDANTS illegally rounded the start and end times of meal
20 periods resulting in PLAINTIFF and other non-exempt Aggrieved Employees not being paid for all
21 time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC*
22 (2021) 11 Cal.5th 58.

23 33. Based on further information and belief, DEFENDANTS did not have a compliant
written meal period policy, nor did DEFENDANTS 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 periods does

1 not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

2 34. PLAINTIFF is further informed and believes and thereon alleges that
3 DEFENDANTS had actual and/or constructive knowledge that their policies and practices,
4 including but not limited to time-rounding and auto-deduction policies and practices, resulted in the
5 denial of meal periods owed to PLAINTIFF and other non-exempt Aggrieved Employees, in
6 violation of California's meal period laws.

7 35. Despite failing to provide lawful meal periods, DEFENDANTS failed to pay
8 PLAINTIFF and other non-exempt Aggrieved Employees, an additional hour of wages at their
9 respective regular rates of compensation for each workday a proper meal period was not provided.
10 DEFENDANTS either failed to pay a meal period premium at all for each workday a proper meal
11 period was not provided and/or failed to pay the proper meal period premium for failure to
12 incorporate all non-discretionary remuneration, including but not limited to, shift differential pay,
13 bonuses, and/or other non-discretionary compensation into the regular rate of compensation for
14 purposes of calculating the owed meal period premium.

15 36. **Rest Periods.** DEFENDANTS did not properly authorize or permit PLAINTIFF and
16 other non-exempt Aggrieved Employees with legally compliant rest periods at a rate of every four
17 (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of
18 the work period, as required by law.

19 37. First, DEFENDANTS did not have a policy and/or practice no instruction as the
20 taking and timing of duty-free rest periods. Second, PLAINTIFF and other non-exempt Aggrieved
21 Employees were not adequately informed, authorized, instructed about, nor permitted an
22 opportunity to take proper rest periods per California law. Third, DEFENDANTS failed to maintain
23 a company rest period policy compliant with California law and failed to provide PLAINTIFF and
non-exempt Aggrieved Employees with proper rest periods. As noted, liability for 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 orders
requirements. *Brinker, supra*, 53 Cal.4th 1004.

1 38. PLAINTIFF and other non-exempt Aggrieved Employees were not adequately
2 informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per
3 California law. Any purported rest periods were consistently interrupted, cut short, on duty,
4 restricted to premises, and/or late due to understaffing, workload, and/or the nature and constraints
5 of PLAINTIFF's and other non-exempt Aggrieved Employees' job duties. For example, during his
6 employment PLAINTIFF was rarely, if ever, authorized or permitted to take a lawful rest period as
7 required by California law. Other non-exempt Aggrieved Employees were also deprived and
8 continue to be deprived of lawful rest periods due to their need to remain on premises during
9 purported rest periods, complete their assigned work tasks, and/or due to understaffing, and/or
commentary from supervisors pressuring them to skip rest periods completely or otherwise take
non-compliant rest periods.

10 39. Based on information and belief, DEFENDANTS implemented policies and/or
11 practices that failed to relieve PLAINTIFF and other non-exempt Aggrieved Employees of all duties
12 and DEFENDANTS' control during rest periods. Moreover, based on information and belief,
13 PLAINTIFF and other non-exempt Aggrieved Employees were pressured to complete their work
14 duties according to a designated schedule such that rest periods were only taken once jobs were
completed/as time permitted.

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

23 41. By failing to provide rest periods for every four (4) hours or major fraction thereof,
and by failing to provide compensation for these missed or unlawful rest periods, DEFENDANTS

willfully violated the provisions of Labor Code section 226.7.

42. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate PLAINTIFF and other non-exempt Aggrieved Employees for all hours worked, including all owed minimum and overtime wages. As explained above, PLAINTIFF and the non-exempt Aggrieved Employees were consistently unable to take off duty, thirty-minute, uninterrupted first and second meal periods, often being forced to work through part or all of their meal periods due to the need for PLAINTIFF and non-exempt Aggrieved Employees to tend to their work tasks, and/or commentary from supervisors pressuring non-exempt Aggrieved Employees to take non-compliant meal periods or skip meal periods completely, as alleged above.

43. On information and belief, DEFENDANTS implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for meal periods and/or requiring 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 the purported meal periods were short, not taken, interrupted, or not relieved of all duties and employer control, depriving non-exempt Aggrieved Employees of all wages owed.

44. Based on further information and belief, DEFENDANTS rounded the start and end times of employee meal periods and shift start and end times resulting in PLAINTIFF and other non-exempt Aggrieved Employees not being paid for all time worked.

45. PLAINTIFF alleges on information and belief that DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other non-exempt Aggrieved Employees of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. Moreover, based on information and belief, when non-exempt Aggrieved Employees clocked in before the start of their shift time, DEFENDANTS only paid from the start of the scheduled shift time and not from the actual start time.

46. DEFENDANTS' failure to pay for all time worked by virtue of its auto-deduction and time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF

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

4 47. Moreover, based on information and belief, DEFENDANTS had and continue to
5 have a policy of paying PLAINTIFF and other non-exempt Aggrieved Employees for scheduled
6 hours, rather than actual hours worked due to DEFENDANTS' mandated off-the-clock work
7 policies and practices. PLAINTIFF and other non-exempt Aggrieved Employees were required to
8 perform off-the-clock work for which they were not compensated. For example, at least twice a
9 week DEFENDANTS required PLAINTIFF to report to work at least two hours before his regularly
10 scheduled shift. PLAINTIFF was required to report two hours earlier and begin working but was
11 told not to clock-in during this time. As such, at least twice a week, PLAINTIFF worked at least
12 two hours of off-the-clock pre-shift work that was not compensated. Moreover, at least a few days
13 a month, DEFENDANTS required PLAINTIFF to report to work on a scheduled day off. On such
14 days, PLAINTIFF was not allowed to clock in to work during this unscheduled shift and was
15 therefore not compensated for all hours worked on that shift. Based on information and belief,
16 DEFENDANTS required and continue to require other non-exempt Aggrieved Employees to
17 complete uncompensated off-the-clock work.

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

23 49. Based on information and belief, DEFENDANTS failed and continues to fail to pay
premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours
in a week due to DEFENDANTS' automatic deduction and time rounding policies and practices for
meal periods, start shift times and end times, and mandated off-the-clock work, which resulted in
the failure to account for all hours worked and thus the denial of minimum wages as well as overtime

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

5 50. Based on information and belief, DEFENDANTS have incorrectly and illegally
6 displayed the overtime wages on non-exempt Aggrieved Employees' wage statements because the
7 overtime is broken up in such a way that it does not permit PLAINTIFF and/or non-exempt
8 Aggrieved Employees the legally required notice as to what they are being paid and an opportunity
to figure out what may be still owed to them.

9 51. Based on further information and belief, DEFENDANTS also failed to pay the
10 correct overtime rate to PLAINTIFF and other non-exempt Aggrieved Employees due to
11 DEFENDANTS' failure to incorporate all non-discretionary remuneration, including but not limited
12 to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular pay rate(s)
of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment
13 of overtime wages owed to PLAINTIFF and other non-exempt Aggrieved Employees.

14 52. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
15 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
16 required by Labor Code section 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
17 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
18 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
19 Employees began and ended each work period, time records of meal periods, and accurate itemized
20 wage statements. For example, DEFENDANTS time records for PLAINTIFF are inaccurate and
21 incomplete as they do not include a meal period start and end time. Based on information and belief,
22 DEFENDANTS similarly failed to maintain accurate records for other non-exempt AGGRIEVED
EMPLOYEES.

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

7 54. **Failure to Produce Records.** Based on information and belief, DEFENDANTS
8 failed and continue to fail to produce or make available a current or former employee's personnel
9 records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432,
10 and/or the applicable Wage Order. For example, on December 23, 2021, PLAINTIFF sent a request
11 for payroll and personnel records to DEFENDANTS, but DEFENDANTS failed to produce the
12 requested records within the time periods delineated by California labor law. Based on information
13 and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and
14 personnel records when requested by other Aggrieved Employees, resulting in violations of Labor
15 Code sections 226(b)-(c), 1198.5, and 432 and the applicable Wage Order.

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

21 56. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
22 recordkeeping provisions, minimum wages, overtime wages, and business expenses result in
23 separate violations of sections 1198 and 1199.

 57. **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
worked at the proper wage rate and by failing to pay PLAINTIFF and non-exempt Aggrieved
Employees an additional hour of pay for each meal/rest period not provided or that was otherwise

1 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

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

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

14 60. At all relevant times, DEFENDANTS shifted the cost of doing business onto
15 PLAINTIFF and Aggrieved Employees by requiring them to pay for DEFENDANTS' business
16 expenses, including but not limited to, use of their personal mobile phone and data plan usage as
17 well as costs associated with the purchase and/or maintenance of uniforms/clothing.

18 61. Based on information and belief, DEFENDANTS required Aggrieved Employees to
19 use a personal phone to respond to work-related inquiries from coworkers and/or supervisors.

20 62. As such, PLAINTIFF and other Aggrieved Employees were improperly required to
21 pay for business expenses that are supposed to be DEFENDANTS' responsibility, including but not
22 limited to, cell phone/data plan charges incurred as a result of being required to use their personal
23 cell phones/other mobile communication devices for work related purposes.

24 63. DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees with
25 full reimbursement for all reasonable expenses associated with carrying out their duties. As such,
26 DEFENDANTS required that PLAINTIFF and Aggrieved Employees subsidize and/or carry the
27 burden of business expenses in violation of Labor Code section 2802.

64. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to provide accurate wage statements that complied with Labor Code section 226. DEFENDANTS provided PLAINTIFF and other non-exempt Aggrieved Employees with wage statements that failed to indicate the 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 virtue of the automatic deduction for meal periods, time-rounding policies and practices, and other off-the clock work policies and practices, and failure to pay meal and rest break premiums, all described in greater detail *supra*), which results in a violation of Labor Code section 226.

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

66. As a result, the wage statements provided to PLAINTIFF and other Aggrieved Employees were not accurate and did not include all of the statutorily required information. For example, based on information and belief, there are several important details missing from PLAINTIFF's wage statements. First, DEFENDANTS' name is listed incorrectly (upon information and belief, DEFENDANTS listed as its business name a non-registered dba), and the hours that PLAINTIFF and non-exempt Aggrieved Employees worked are broken down erroneously as well as the rate of pay. Based on information and belief, DEFENDANTS split overtime pay into two sections on PLAINTIFF's wage statements requiring PLAINTIFF and non-exempt Aggrieved Employees to perform extensive calculations to determine what their pay rates were for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). These are just examples of the egregious violations that the DEFENDANTS' wage statements display, making it almost impossible for the PLAINTIFF to know all of the additional legal violations.

67. Moreover, on information and belief, DEFENDANTS failed and continue to fail to provide notice of the correct sick leave amount balance available to PLAINTIFF and non-exempt

1 Aggrieved Employees on their wage statements or other written statement(s) of their sick leave
2 balance(s).

3 68. These violations subject DEFENDANTS to civil penalties under Labor Code section
4 226.

5 69. **Unlawful Deductions.** Upon information and belief, PLAINTIFF that
6 DEFENDANTS made unlawful deductions from PLAINTIFF's and other non-exempt Aggrieved
7 Employees' paychecks during the relevant time period, in violation of Labor Code section 221.

8 70. **Violation of Labor Code Section 212.** Based on information and belief,
9 DEFENDANTS violated Labor Code section 212 by issuing checks to PLAINTIFF and other non-
10 exempt Aggrieved Employees that were not negotiable and payable in cash, on demand, without
11 discount, further failing to provide the true name and address of the employer and/or a registered
12 dba on the instrument. Accordingly, DEFENDANTS violated Labor Code section 212.

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

22 72. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
23 and non-exempt Aggrieved Employees on notice of their paid sick leave rights – or thereby putting
their entitlement to sick leave in a Labor Code section 2810.5 notice. DEFENDANTS failed to
provide the posting required by these statutes, showing and demonstrating all of the following:

(1) An employee is entitled to accrue, request, and use paid sick days.

(2) The amount of sick days provided for by the article.

1 (3) The terms of use of paid sick days.

2 (4) That retaliation or discrimination against an employee who requests paid sick
3 days or uses paid sick days, or both, is prohibited and that an employee has the right
4 under this article to file a complaint with the Labor Commissioner against an
5 employer who retaliates or discriminates against the employee.

6 73. Moreover, based on information and belief, DEFENDANTS failed to maintain
7 accurate records of used sick leave and the balance of paid sick leave.

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

14 75. Upon information and belief, DEFENDANTS further failed and continue to fail to
15 comply with Labor Code section 246, by failing to provide PLAINTIFF and all non-exempt
16 Aggrieved Employees with a Labor Code section 226 wage statement, or separate writing containing
17 the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
18 leave, at the time it pays wages. Moreover, based on information and belief, DEFENDANTS fail to
19 pay out accrued sick leave upon non-exempt Aggrieved Employees' request to use paid sick leave.

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

24 77. **Untimely Payment of Final Wages.** Based on information and belief,
25 DEFENDANTS failed to timely pay Aggrieved Employees all wages that were due and owing upon
26 termination or resignation. Based on information and belief, DEFENDANTS provide final wages
27 to Aggrieved Employees on the regular pay day without regard to the timing requirements of Labor

1 Code sections 201-202.

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

7 79. These violations subject DEFENDANTS to civil penalties under Labor Code section
8 203, 210, and/or 256.

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

10 Unlawful Financial and Criminal Background Checks

11 80. Based on information and belief, DEFENDANTS required Aggrieved Employees to
12 agree in writing to unlawful conditions of employment including but not limited to unlawful
13 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
14 violation of Labor Code section 432.5.

15 81. 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 Aggrieved
17 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
18 employment, in violation of California and Federal law, which results in a further violation of Labor
19 Code section 432.5.

20 82. Based on information and belief, DEFENDANTS also required PLAINTIFF and
21 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
22 checks as a condition of obtaining and/or holding employment in violation of the Investigative
23 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.*)

83. Based on further information and belief, DEFENDANTS required 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

1 limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures
2 free of extraneous information (including but not limited to information relevant to
3 consumers/applicants from other states), failing to provide a lawful purpose for the background
4 check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide
5 a way by which the individual can request a copy of the report, and failing to properly obtain
6 authorization or consent to such a background check, and thus was an unlawful background check.

7 84. By requiring PLAINTIFF and other Aggrieved Employees to agree in writing to
8 unlawful criminal and/or financial checks not in conformance with the applicable laws,
9 DEFENDANTS violated Labor Code section 432.5.

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

15 86. Based on further information and belief, DEFENDANTS knew that requiring
16 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
17 condition of obtaining and/or holding employment was unlawful.

18 87. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
19 condition of employment, DEFENDANTS violated Labor Code section 432.5.

20 Unlawful Inquires into Criminal History

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

89. Upon information and belief, DEFENDANTS, in violation of California law,
including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
("FEHA"), asked Aggrieved Employees about convictions prior to extending an offer of

1 employment and/or otherwise impermissibly inquired into criminal history on its employment
2 application in violation of California law, and in violation of Labor code section 432.5.

3 Unlawful PAGA Waiver

4 90. Based on information and belief, DEFENDANTS violated Labor Code section 432.5
5 by requiring Aggrieved Employees to agree in writing to other unlawful agreements, including but
6 not limited to, an unlawful waiver of PAGA and or representative actions as a condition of
7 employment, and moreover, knew that such an agreement was unlawful. By requiring Aggrieved
8 Employees to agree, in writing, to unlawfully agree to resolve PAGA claims through binding
9 arbitration, DEFENDANTS required written agreement to an unlawful provision as a condition of
10 employment which is a violation of labor code section 432.5.

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

13 92. **Violation of Labor Code Section 6310.** Based in information and belief,
14 DEFENDANTS have a policy and/or practice of discriminating and/or retaliating against Aggrieved
15 Employees for engaging in conduct protected by Labor Code section 6310. For example,
16 PLAINTIFF complained about the quality and safety of DEFENDANTS' meat products. As a result
17 of this complaint and in retaliation for making such a complaint, DEFENDANTS reduced
18 PALINTIFF' scheduled hours in violation of Labor Code section 6310.

19 93. 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)**

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

Failure to Keep Accurate Records

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

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

10 97. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
11 PLAINTIFF and other non-exempt Aggrieved Employees violates Labor Code §§ 1174, 1198,
12 1199, and all applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil
13 penalties under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code
14 section and Wage Order provision results in a *separate* civil penalty, for each non-exempt
15 Aggrieved Employee for each pay period during which the referenced statutes and Wage Order
16 provisions were violated.²

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

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

² 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”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”) (emphasis added).

1 99. Section (b) of Labor Code section 226 further requires employers to “afford current
2 and former employees the right to inspect or receive a copy of records pertaining to their
3 employment upon reasonable request to the employer.” Section (c) of Labor Code section 226
4 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
5 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
6 the request as soon as practicable, but no later than 21 calendar days from the date of the request.
7 A violation of this subdivision is an infraction.” An employer’s failure to comply within this
8 timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)
9 penalty from the employer. Lab. Code section 226(f).

10 100. Personnel Records. In addition to their right to time and pay records, employees, and
11 their representatives, have the right to inspect and receive a copy of their personnel files pursuant
12 to Labor Code section 1198.5. This statute applies to both former and current employees. Labor
13 Code section 432 further specifies that employers must furnish copies of all employment records
14 bearing the employee’s signature. Labor Code section 1198.5 also requires that the file be made
15 available for inspection or receipt within a “reasonable” amount of time, but “not later than 30
16 calendar days from the date the employer receives a written request.” An employer’s failure to
17 comply within this timeframe likewise entitles a current or former employee to recover a seven
18 hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

19 101. Based on information and belief, DEFENDANTS fail to timely produce or make
20 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
21 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations
22 subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

23 **Meal Period Violations**

 102. 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.*

1 *Superior Court* (2012) 53 Cal.4th 1004.

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

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

19 105. Employers must pay employees an additional hour of wages at the employees'
20 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
21 meal period, first meal period provided after five (5) hours, second meal period provided after 10
22 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to
23 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.

24 106. DEFENDANTS have a consistent policy and/or practice of not providing lawful
meal periods to PLAINTIFF and all non-exempt Aggrieved Employees and/or providing

1 compensation in lieu thereof. As explained above, PLAINTIFF and other non-exempt Aggrieved
2 Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted first and
3 second meal periods, often being forced to take late meal periods, interrupted meal periods and/or
4 work through part or all their purported meal periods. Moreover, DEFENDANTS failed to keep
accurate records of meal period start and end times.

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

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

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

17 **Rest Period Violations**

18 110. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
19 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
20 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
21 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
22 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts 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.*

1 at 1029). The rest period requirement obligates employers to permit and authorize employees to
2 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
3 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
4 Cal.5th 257. If the employer fails to provide any required rest period, the employer must pay the
5 employee one hour of pay at the employee's regular rate of compensation for each workday the
6 employer did not provide at least one legally required rest period, pursuant to Labor Code section
226.7, and applicable IWC Wage Order, §12(B).

7 111. As explained above, DEFENDANTS did not properly authorize and provide
8 PLAINTIFF and other non-exempt Aggrieved Employees with legally compliant rest periods at a
9 rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are
10 provided in the middle of the work period, as required by law. Any purported rest periods were
consistently interrupted, cut short, on duty, restricted to premises and/or late.

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

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

19 **Minimum and Overtime Wage Violations**

20 114. California law provides that employees in California must be paid for all hours
21 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
22 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
The minimum wage standard applies to each hour employees worked for which they were not paid.

1 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
2 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
3 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

4 115. California law also provides that employees in California must be paid overtime,
5 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
6 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
7 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
8 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.*

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

16 117. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
17 and unpaid overtime wages owed to PLAINTIFF and those non-exempt Aggrieved Employees that
18 worked more than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid
double time wages.

19 118. Moreover, based in information and belief, DEFENDANTS failed to pay proper
20 overtime rates to PLAINTIFF and non-exempt Aggrieved Employees due to DEFENDANTS'
21 failure to incorporate all forms of non-discretionary compensation, including but not limited to,
22 shift differential pay, bonus pay, and/or other non-discretionary pay into the regular pay rate(s) of
pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment

1 of overtime wages owed to PLAINTIFF and other non-exempt Aggrieved Employees.

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

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

10 **Statutory Wage Violations**

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

22 **Refusal to Make Payment**

23 122. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
and continue to violate this section by failing to pay PLAINTIFF and non-exempt Aggrieved
Employees for all hours worked at the proper wage rate and by failing to pay an additional hour of
pay for each meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland*

1 *Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject
2 DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a
3 *separate* civil penalty, for each non-exempt Aggrieved Employee, for each pay period during which
4 the statute provisions were violated.³

5 **Business Expense Violations**

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

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

17 125. Among other things, under California law, when employees must use their personal
18 cellphones for work-related purposes, the employer must reimburse them for a reasonable
19 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
20 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
21 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
22 *Id.* 1144-1145. Further, “any contract or agreement, express or implied, made by any employee to
23 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

³ Labor Code § 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).

1 to under the laws of this State.” See Cal. Lab. Code section 2804.

2 126. Based on information and belief, PLAINTIFF and Aggrieved Employees were
3 improperly required to provide and maintain work tools that are supposed to be the responsibility
4 of the employer, including but not limited to, cell phone/data plan charges incurred as a result of
5 being required to use their personal cell phones/other personal mobile communication devices for
work related purposes, and/or costs associated with the maintenance and/or purchase of uniforms.

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

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

12 **Wage Statement Violations**

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

21 130. As DEFENDANTS failed to provide PLAINTIFF and non-exempt Aggrieved
22 Employees with meal and rest periods that complied with Labor Code section 226.7, the wage
statements DEFENDANTS issued to PLAINTIFF and non-exempt Aggrieved Employees failed

1 and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code
2 section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section
3 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

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

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

22 133. Moreover, based on information and belief, DEFENDANTS split overtime pay into
23 two sections on wage statements requiring PLAINTIFF and non-exempt Aggrieved Employees to
perform extensive calculations to determine what their pay rates were for each corresponding hour
worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).

134. As a result, PLAINTIFF and other non-exempt Aggrieved Employees have suffered
injury as they could not easily determine whether they received all wages owed to them and whether

1 they were paid for all hours worked.

2 135. Separately, and independent of the above allegation, based on information and belief,
3 DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that further
4 violate Labor Code section 226(a), by failing to list the correct name and/or address of the legal
5 entity that is the employer.

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

9 **Unlawful Deductions**

10 137. Labor Code Section 221 prohibits an employer from “collect[ing] or receiv[ing] from
11 an employee any part of wages theretofore paid by said employer to said employee.” PLAINTIFF
12 alleges on information and belief that DEFENDANTS made unlawful deductions from
13 PLAINTIFF’s paychecks during the relevant time period.

14 138. The foregoing violates, including but not limited to, Labor Code Section 221, which
15 subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

16 **Violation of California Labor Code Section 212**

17 139. PLAINTIFF alleges on information and belief that DEFENDANTS violated Labor
18 Code Section 212. Labor Code Section 212 reads:

19 (a) No person, or agent or officer thereof, shall issue in payment of wages due,
20 or to become due, or as an advance on wages to be earned:

21 (1) Any order, check, draft, note, memorandum, or other acknowledgment of
22 indebtedness, unless it is negotiable and payable in cash, on demand, without
23 discount, at some established place of business in the state, the name and address
of which must appear on the instrument, and at the time of its issuance and for a
reasonable time thereafter, which must be at least 30 days, the maker or drawer
has sufficient funds in, or credit, arrangement, or understanding with the drawee

⁴ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

1 for its payment.

2 (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or
3 purporting to be payable or redeemable otherwise than in money.

4 (b) Where an instrument mentioned in subdivision (a) is protested or dishonored,
5 the notice or memorandum of protest or dishonor is admissible as proof of
6 presentation, nonpayment and protest and is presumptive evidence of knowledge
of insufficiency of funds or credit with the drawee.

7 (c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the
8 bank's address need not appear on the instrument and, in that case, the instrument
9 shall be negotiable and payable in cash, on demand, without discount, at any
10 place of business of the drawee chosen by the person entitled to enforce the
instrument.

11 140. Based on information and belief, DEFENDANTS issued checks to PLAINTIFF and
12 non-exempt Aggrieved Employees that were not negotiable and payable in cash, on demand, without
13 discount, further failing to provide the true name and address of the DEFENDANTS and/or a
registered dba on the instrument. Accordingly, DEFENDANTS violated Labor Code Section 212.

14 **Standard Conditions of Labor Violations**

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

21 **Sick Leave Violations**

22 142. DEFENDANTS violated California's paid sick leave laws including, Labor Code
23 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to

1 PLAINTIFF and other non-exempt Aggrieved Employees or failed to properly accrue paid sick
2 leave due to DEFENDANTS' failure to account for actual hours worked (as a result of the
3 rounding/automatic deduction policies and practices for meal periods and shift start and end
4 times/or other required off-the-clock work described herein), and/or failure to incorporate multiple
5 rates of pay and/or all forms of non-discretionary remuneration into the sick pay calculation.

6 143. DEFENDANTS further failed to give PLAINTIFF and other non-exempt Aggrieved
7 Employees notice of their paid sick leave rights – or thereby putting their entitlement to sick leave
8 in a Labor Code section 2810.5 notice and failed to provide the posting required by these statutes.
9 In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance
10 of paid sick leave left to the employees, which affected PLAINTIFF and non-exempt Aggrieved
11 Employees' intelligent exercise of their paid sick leave.

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

16 145. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
17 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all non-
18 exempt Aggrieved Employees, permitting the presumption that PLAINTIFF and all non-exempt
19 Aggrieved Employees were entitled to the maximum number of hours accruable.

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

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

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

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

4 **Untimely Payment of Final Wages**

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

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

18 152. As alleged above, DEFENDANTS fail to timely pay final wages to Aggrieved
19 Employees upon separation of employment in violation of Labor Code sections 201-202 and/or did
20 not include all owed vacation pay. Moreover, final paychecks, once provided to non-exempt
21 Aggrieved Employees did not include all wages owed as they are devoid of, including but not
22 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
23 sick leave and/or paid time off wages at the properly accrued rates.

24 153. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
25 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
26 256.

27 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

23 157. Based on information and belief, DEFENDANTS also required 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 as
alleged above.

 158. Based on further information and belief, DEFENDANTS also required Aggrieved

1 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
2 background checks throughout the duration of employment, in violation of the ICRAA and/or
3 FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5,
4 by requiring applicants and employees to agree to an unlawful provision as a condition of
employment.

5 159. Based on further information and belief, DEFENDANTS knew that requiring
6 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
7 condition of obtaining and/or holding employment was unlawful.

8 160. By requiring that Aggrieved Employees sign off on the illegal background and/or
financial checks, DEFENDANTS violated Labor Code section 432.5.

9 Unlawful Inquires into Criminal History

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

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

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

21 Unlawful PAGA Waiver

22 164. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring

1 PLAINTIFF and Aggrieved Employees to agree in writing to other unlawful agreements, including
2 but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of
3 employment.

4 165. Based on information and belief, DEFENDANTS require Aggrieved Employees to
5 agree, in writing, to waive any right to bring an action on a class, collective, or representative basis.

6 166. An action pursuant to PAGA “...is a representative action on behalf of the state”
7 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
8 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and
9 unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
10 (“We conclude that where, as here, an employment agreement compels the waiver of representative
11 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

12 167. Moreover, the California Supreme Court has ruled that a court cannot compel
13 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as
14 an individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There
15 is no individual component to a PAGA action because ‘every PAGA action ... is a representative
16 action on behalf of the state.’”)

17 168. Upon information and belief, DEFENDANTS required PLAINTIFF and required
18 and continue to require Aggrieved Employees to agree in writing to a waiver of PAGA and/or
19 representative actions. By requiring PLAINTIFF and Aggrieved Employees to agree, in writing, to
20 the unlawful representative action/ PAGA waiver, DEFENDANTS required written agreement to
21 an unlawful provision as a condition of employment which is a violation of labor code section
22 432.5.

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

24 170. **Violation of Labor Code Section 6310**

25 171. Labor Code section 6310 prohibits an employer from retaliating against an employee
for among other things, making an oral or written complaint to the division of occupational safety

1 and health or other governmental agencies, and/or for assisting the division with reference to
2 employee health and safety.

3 172. Based in information and belief, DEFENDANTS had a policy and/or practice of
4 discriminating and/or retaliating against Aggrieved Employees for engaging in conduct protected
5 by Labor Code section 6310. For example, PLAINTIFF complained about the quality and safety
6 of DEFENDANTS' meat products. As a result of this complaint and in retaliation for making such
7 a complaint, DEFENDANTS reduced PLAINTIFF's scheduled hours in violation of Labor Code
section 6310.

8 173. Under the provisions of PAGA and the above mentioned Labor Code sections,
9 including but not limited to Labor Code sections 201, 202, 203, 210, 212, 221, 225.5, 226, 226.3,
10 226.7, 245, 247.5, 248, 248.2, 248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 6310, 1174,
11 1174.5, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage
12 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 the
following penalties:

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

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

23 **PRAYER FOR RELIEF**

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

- 3 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
4 25% payable to Aggrieved Employees);
- 5 2. For reasonable attorney's fees and costs of suit; and
- 6 3. For such other and further relief that the Court deems just and proper.

7 Dated: April 19, 2022

CROSNER LEGAL, P.C.

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