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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SANTA BARBARA – ANACAPA**
11

12 MATT DEL CAMPO, on behalf of
himself, the State of California, and others
13 similarly situated and aggrieved,

14 Plaintiff,

15
16 v.

17 VENTURA INVESTMENT CO., a
18 California corporation; and DOES 1-100,
inclusive,
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20 Defendants.
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Case No.: 22CV02147

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

1 Plaintiff MATT DEL CAMPO ("PLAINTIFF" or "PLAINTIFF CAMPO"), an individual
2 on behalf of himself, the State of California, and all other Aggrieved Employees (defined below),
3 hereby files this Complaint against Defendants VENTURA INVESTMENT CO., a California
4 corporation; and DOES 1-100, 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 similarly
9 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California's
10 Private Attorney General Act, Labor Code section 2698 et. seq. ("PAGA"), to recover civil penalties
11 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
12 Employees) for DEFENDANTS' violations of the California Labor Code as alleged below.

13 **JURISDICTION AND VENUE**

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

16 3. Venue is proper in this judicial district and the County of Santa Barbara, pursuant to
17 California Code of Civil Procedure section 395.5 because DEFENDANTS employed PLAINTIFF
18 at one or more of DEFENDANTS' facilities located in the County of Santa Barbara, and some of
19 the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in this county, including,
20 at DEFENDANTS' facility located at 530 W. Anapamu St. Santa Barbara, CA 93101. Also, see,
21 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
22 PAGA action is proper in any county where the defendants committed Labor Code violations against
23 some of its employees).

24 **THE PARTIES**

25 4. PLAINTIFF resides in Santa Barbara County, in the State of California. PLAINTIFF
26 was employed by DEFENDANTS in the State of California as a non-exempt employee during the
27 relevant period. PLAINTIFF worked for DEFENDANTS as a non-exempt property manager and/or
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1 other similar title at various of DEFENDANTS' facilities located in the County of Santa Barbara,
2 State of California.

3 5. DEFENDANT VENTURA INVESTMENT CO. is a California corporation that at
4 all relevant times, was authorized to do business within the State of California and is doing business
5 within the State of California. DEFENDANTS and their managing agents own, operate, or
6 otherwise manage a real estate development company that, among other things, manages
7 commercial and residential properties located throughout California, including but not limited to,
8 multiple residential properties located in the County of Santa Barbara, where DEFENDANTS
9 employed PLAINTIFF to work.

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

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

25 **JOINT LIABILITY**

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

1 thereby creating a common law employment relationship. See *Martinez v. Combs*, 49 Cal.4th 35, 64
2 (2010). One reason that the IWC defined "employer" in terms of exercising control was to reach
3 situations in which multiple entities control different aspects of the employment relationship.
4 Supervision of the work, in the specific sense of exercising control over how services are properly
5 performed, is properly viewed as one of the "working conditions" mentioned in the wage order. *Id.*
6 at 76. A joint employer relationship exists when one entity hires and pays a worker, and the other
7 entity supervises the work. *Id.*

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

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

21 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant to
22 this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
23 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
24 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
25 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
26 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
27 Employees. Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS
28 created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and

1 overtime pay, time-keeping practices, meal and rest periods, payment of wages, hours, background
2 check inquiries and practices, and working conditions that were distributed to, and/or applied to
3 PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS uniformly
4 compensated and controlled the wages of Plaintiff and the Aggrieved Employees in a uniform
5 manner. DEFENDANTS collectively represented to PLAINTIFF and the Aggrieved Employees that
6 each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained
7 the right to terminate PLAINTIFF and the Aggrieved Employees' employment with or without
8 cause. Upon information and belief, DEFENDANTS further collectively represented to PLAINTIFF
9 and the Aggrieved Employees in writing the details of their compensation, and the manner in which
10 they were to take meal and rest periods, the procedures required by DEFENDANTS collectively for
11 recordation of hours worked and the policies applicable to PLAINTIFF and the Aggrieved
12 Employees by which DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF
13 and the Aggrieved Employees.

14 12. Thus, DEFENDANTS collectively exercised the right to control the wages, hours and
15 working conditions of PLAINTIFF and the Aggrieved Employees. As such, DEFENDANTS
16 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
17 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
18 PLAINTIFF seek relief in this Complaint.

19 **PAGA ALLEGATIONS**

20 13. PLAINTIFF brings this action under the PAGA, as a representative action on behalf of
21 himself, the State of California and Aggrieved Employees, regarding violations of the California
22 Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

23 All current and former non-exempt employees employed by DEFENDANTS
24 in California at any time from one year plus 65 days from filing of the initial
25 Complaint through the present ("PAGA Period").

26 14. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
27 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
28 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,

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

8 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

9 15. On March 24, 2022, PLAINTIFF DEL CAMPO, through his counsel, gave written
10 notice by online filing with the California Labor and Workforce Development Agency ("LWDA")
11 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
12 allegations alleged in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's
13 claims for violations of the California Labor Code and the applicable wage orders on behalf of
14 himself, the State of California and other Aggrieved Employees. The LWDA assigned PLAINTIFF
15 DEL CAMPO the following case number: LWDA-CM-875251-22. PLAINTIFF DEL CAMPO,
16 through his counsel, also sent the PAGA Notice to DEFENDANTS via certified mail, on March 24,
17 2022.

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

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

26 **FACTUAL ALLEGATIONS**

27 18. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were employed
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1 by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised control over
2 PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them to work.
3 PLAINTIFF and the Aggrieved Employees worked in various job positions, including but not
4 limited to, property manager, assistant property manager, maintenance technician, maintenance
5 worker, and/or other similar title(s).

6 19. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during the
7 PAGA Period and was subject to one or more of the Labor Code violations alleged herein.
8 PLAINTIFF worked for DEFENDANTS as a property manager and/or other similar title(s) until
9 DEFENDANTS terminated PLAINTIFF's employment, on or about April 27, 2021.

10 20. PLAINTIFF typically worked shifts lasting over ten (10) hours per day, and he worked
11 at least five (5) days per week. Based on information and belief, at times, DEFENDANTS
12 misclassified PLAINTIFF as an exempt employee and compensated PLAINTIFF on a salaried basis.
13 Based on information and belief, at times, PLAINTIFF was compensated on an hourly basis but
14 only for time counted by DEFENDANTS as hours worked. Based on information and belief, at
15 times, DEFENDANTS also provided PLAINTIFF and other Aggrieved Employees with onsite
16 lodging which DEFENDANTS accounted for as a portion of their earned compensation.
17 PLAINTIFF and other Aggrieved Employees were also compensated with non-discretionary
18 remuneration, including but not limited to, non-discretionary bonuses/incentive pay and/or
19 commission pay and or other non-discretionary compensation.

20 21. During the relevant period, DEFENDANTS misclassified PLAINTIFF and other
21 Aggrieved Employees as exempt employees to try to evade California wage and hour laws including
22 but not limited to, payment of minimum and overtime wages and provision of meal and rest periods
23 even though PLAINTIFF and other misclassified aggrieved employees did not satisfy any test for
24 exemption under California law. For example, based on information and belief, PLAINTIFF did
25 not regularly exercise discretion/independent judgment in his job and typically spent more than fifty
26 percent of his workday performing non-exempt duties such as, but not limited to, answering phone
27 calls, scheduling maintenance workers, collecting signatures on documents, documenting and
28 reporting rents and deposits collected and owed/maintaining records, among other

1 clerical/ministerial duties. Based on further information and belief, PLAINTIFF and other
2 Aggrieved Employees were not compensated with a monthly salary (exclusive of the value of any
3 lodging) that equated to twice the California minimum wage rate. See, Labor Code section 515 and
4 Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must
5 earn “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-
6 time employment”].

7 **22. Denied Meal Periods.** During the relevant period, PLAINTIFF and other Aggrieved
8 Employees regularly worked shifts of five and one half (5 ½) hours or more and were entitled to at
9 least one thirty-minute, uninterrupted, off-duty meal break per shift. However, DEFENDANTS
10 failed to provide PLAINTIFF and the other Aggrieved Employees with timely, thirty-minute,
11 uninterrupted meal breaks and/or required PLAINTIFF and the other Aggrieved Employees to work
12 through purported meal breaks, remain on DEFENDANTS’ premises and/or remain tethered to
13 DEFENDANTS’ communication devices during purported meal periods. Based on information and
14 belief, PLAINTIFF and other Aggrieved Employees were not adequately informed, authorized,
15 instructed about, nor permitted an opportunity to take lawful meal breaks per California law.

16 **23.** PLAINTIFF and other Aggrieved Employees were consistently unable to take timely,
17 off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods,
18 interrupted meal periods and/or work through part or all their meal periods due to the nature and
19 constraints of their job duties, lack of relief workers available, and/or commentary from supervisors
20 pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. For
21 example, PLAINTIFF’s supervisor informed PLAINTIFF that PLAINTIFF was required to monitor
22 his company phone and be on call twenty-four hours per day during his five-day shifts.
23 PLAINTIFF’s meal periods were consistently interrupted and/or cut short due to lack of relief
24 workers available and having to attend to work tasks requiring immediate attention, such as, but not
25 limited to, answering telephone/walk-in inquiries from residents/prospective tenants, and
26 maintenance persons/vendors, among other duties. Based on information and belief, other
27 Aggrieved Employees, also had their meal periods interrupted, cut short, and/or denied completely
28 due to nature and constraints of their job duties, lack of relief workers available, and/or commentary

1 from their supervisors pressuring them to take non-compliant meal periods and/or skip meal periods
2 completely.

3 24. Based on information and belief, DEFENDANTS implemented policies and practices
4 that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
5 DEFENDANTS's control during unpaid meal breaks. For example, PLAINTIFF was required to
6 monitor and be responsive to work communication devices, such as but not limited to, a company-
7 provided phone which he was required to answer as needed during purportedly off-duty meal
8 periods. Furthermore, based on information and belief, Aggrieved Employees were required to
9 remain on DEFENDANTS' premises during any purported meal periods. As such, PLAINTIFF and
10 Aggrieved Employees remained subjected to DEFENDANTS' control during meal periods.
11 PLAINTIFF and other Aggrieved Employees were instructed by their supervisors to work during
12 unpaid meal periods due to understaffing, lack of coverage, and/or lack of relief workers.

13 25. Despite failing to provide lawful meal periods, DEFENDANTS implemented a policy
14 and/or practice of automatically deducting at least thirty minutes (often at least 60 minutes) per shift
15 for these missed/unlawful meal periods, despite having actual and/or constructive knowledge that
16 PLAINTIFF and other Aggrieved Employees did not receive compliant meal periods.

17 26. Based on information and belief, DEFENDANTS rounded the start and end times of
18 Aggrieved Employees' meal periods resulting in PLAINTIFF and other Aggrieved Employees not
19 being paid for all time worked as well as late or shortened meal periods.

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

24 28. Moreover, DEFENDANTS failed to provide a second meal break to PLAINTIFF
25 and Aggrieved Employees that worked shifts of more than ten hours. DEFENDANTS failed to
26 provide PLAINTIFF and other Aggrieved Employees with a second, duty-free, uninterrupted, thirty-
27 minute meal period even though PLAINTIFF and other Aggrieved Employees worked shifts lasting
28 longer than ten hours and thus were entitled to a second duty-free, uninterrupted, thirty-minute meal

1 period before the end of the tenth hour of work. Per DEFENDANTS' unlawful meal period policies
2 and practices, DEFENDANTS only provided a single meal period per shift during shifts lasting
3 longer than ten hours and that single meal period was usually non-compliant. For example, at times,
4 PLAINTIFF regularly worked more than ten or twelve hours per shift but was not provided with a
5 single compliant meal period during his shift. Furthermore, based on information and belief,
6 DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees an additional hour of
7 wages at their respective regular rates of pay for each workday a compliant meal period was denied.
8 DEFENDANTS either failed to pay Aggrieved Employees a meal period premium at all for each
9 workday a compliant meal period was denied or failed to pay the legally required meal period
10 premium for failure to incorporate all non-discretionary compensation, including but not limited to,
11 non-discretionary bonuses/incentive pay, piece-rate/commission pay and/or other non-discretionary
12 compensation into the regular pay rate used to calculate the owed meal period premium.

13 29. For example, PLAINTIFF regularly earned non-discretionary bonuses and/or
14 commission pay. Based on information and belief, DEFENDANTS failed to factor PLAINTIFF's
15 non-discretionary compensation into his regular rate of pay for purposes of calculating the owed
16 meal period premium. Based on information and belief, DEFENDANTS failed to incorporate all
17 non-discretionary compensation into the regular rate of pay for purposes of paying the owed meal
18 period premiums to Aggrieved Employees.

19 30. **Denied Rest Periods.** DEFENDANTS did not authorize or permit PLAINTIFF and
20 other Aggrieved Employees to take legally compliant rest periods at a rate of every four (4) hours
21 worked or major fraction thereof. PLAINTIFF and other Aggrieved Employees were not adequately
22 informed, authorized, instructed about, nor permitted an opportunity to take legally compliant rest
23 breaks.

24 31. PLAINTIFF and other Aggrieved Employees were consistently unable to take a net, ten-
25 minute, off-duty rest period for every four (4) hours worked or major fraction thereof because of the
26 nature and constraints of their job duties and/or commentary from supervisors pressuring them to
27 take non-compliant rest breaks or skip rest breaks completely. PLAINTIFF and other Aggrieved
28 Employees were instructed by their supervisors to work through their rest periods due to lack of

1 coverage/lack of relief workers available and/or understaffing. Any purported rest periods would
2 be interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints
3 of other Aggrieved Employees' job duties, understaffing, and/or commentary from supervisors
4 pressuring them to skip rest breaks completely and/or take non-compliant rest breaks. For example,
5 PLAINTIFF was consistently forced to cut any rest breaks short or skip them completely due to the
6 nature of the work and/or lack of relief workers available to perform work tasks that had to be done
7 immediately, e.g., addressing property maintenance situations, responding to inquiries/concerns
8 from residents, prospective tenants and/or maintenance workers/vendors, among other duties.
9 PLAINTIFF and other Aggrieved Employees were pressured to complete their work duties
10 according to a designated schedule such that rest breaks were only taken once jobs were
11 completed/as time permitted. For example, PLAINTIFF typically worked shifts lasting at least ten
12 hours, but was not provided with a single compliant rest period.

13 32. Based on information and belief, DEFENDANTS did not have a lawful policy,
14 instruction, or practice as to the taking, timing or duty-free nature of rest periods. Based on
15 information and belief, DEFENDANTS implemented policies and practices that failed to relieve the
16 Aggrieved Employees of all duties and employer control during any rest periods. For example,
17 based on information and belief, DEFENDANTS required PLAINTIFF to remain on the worksite
18 premises and/or tethered to work-communication devices during any rest periods. As such,
19 PLAINTIFF and other Aggrieved Employees remained under DEFENDANTS' control during any
20 rest periods, rendering said rest periods on duty and therefore noncompliant with California rest
21 period law. As such, PLAINTIFF and other Aggrieved Employees remained under DEFENDANTS'
22 control during any rest periods, rendering said rest periods on duty and therefore noncompliant with
23 California rest period law. Despite not providing PLAINTIFF and other Aggrieved Employees with
24 all owed legally compliant rest periods, DEFENDANTS did not pay PLAINTIFF and other
25 Aggrieved Employees an additional hour of wages at their respective regular rates of pay for any
26 missed/non-compliant rest period.

27 **33. Unpaid Minimum Wages and Overtime Wages.** DEFENDANTS failed to
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1 compensate all hours worked, including all owed minimum wages and overtime wages, including
2 double time wages. As explained above, PLAINTIFF and the other Aggrieved Employees were
3 regularly required to perform off-the-clock work by virtue of DEFENDANTS' automatic-deduction
4 policy for meal periods. On information and belief, the work time reported by the Aggrieved
5 Employees was rounded and automatically deducted for at least 30 minutes (and usually at least
6 sixty minutes) of wages every day they worked for DEFENDANTS for meal breaks not taken,
7 interrupted, or not relieved of all duties and DEFENDANTS' control. Per DEFENDANTS' policies
8 and practices, the Aggrieved Employees were required to clock out for at least thirty (and usually at
9 least 60 minutes per shift) for purported meal periods, despite DEFENDANTS' actual and/or
10 constructive knowledge that the Aggrieved Employees were working through part or all these meal
11 periods.

12 34. PLAINTIFF alleges on information and belief that DEFENDANTS implemented a time-
13 rounding system that as applied systematically deprived Aggrieved Employees of compensable time
14 because the time-rounding system implemented by DEFENDANTS would almost always, if not
15 always, result in understating actual compensable work time. Moreover, based on information and
16 belief, DEFENDANTS had and continue to have a continuous policy of paying Aggrieved
17 Employees for scheduled hours, rather than actual hours worked and requiring pre-shift and/or post-
18 shift off-the-clock work. Based on information and belief, DEFENDANTS required PLAINTIFF
19 and other Aggrieved Employees to perform mandated off-the-clock work. PLAINTIFF and other
20 Aggrieved Employees were required to complete pre-shift and post-shift off-the-clock work due in
21 part, to DEFENDANTS' failure to record the true shift start times and shift end times. For example,
22 DEFENDANTS' time records for PLAINTIFF for 2021 consistently show a total daily hours
23 worked of eight (8) with the same precise shift start time of 9:00 a.m. and same precise shift end
24 time of 6:00 p.m. Based on information and belief, DEFENDANTS instructed PLAINTIFF and
25 other Aggrieved Employees to record their scheduled shift start time and end times (as well as
26 scheduled meal periods) regardless of when PLAINTIFF and other Aggrieved Employees actually
27 started and stopped working on those days, which resulted in significant off-the-clock work and the
28 underpayment of wages owed to PLAINTIFF and other Aggrieved Employees. For example,

1 PLAINTIFF's supervisor instructed PLAINTIFF to record that PLAINTIFF started working at
2 precisely 9:00 a.m. each day and stopped working at precisely 6:00 p.m. each day, which did not
3 account for pre-shift and/or post shift off-the-clock work, such as, but not limited to, responding to
4 resident noise complaints/assisting residents after hours, providing access to maintenance vendors
5 and/or assisting maintenance vendors with onsite projects after hours, among other off-the-clock
6 work tasks DEFENDANTS required PLAINTIFF perform outside of his scheduled shift times and
7 for which said time spent completing these work duties was uncompensated. Similarly,
8 PLAINTIFF's supervisor instructed PLAINTIFF to record that PLAINTIFF received a one-hour
9 meal period from precisely 12:00 pm to precisely 1:00 pm each day even though PLAINTIFF was
10 rarely, if ever, afforded a legally compliant meal period. DEFENDANTS' failure to pay for all time
11 worked by virtue of its time-rounding practices and/or practice of only paying for scheduled hours
12 resulted in the underpayment of minimum wages owed to PLAINTIFF and other Aggrieved
13 Employees as well as unpaid overtime wages for those Aggrieved Employees who worked more
14 than eight (8) hours in a day and/or forty hours in a week.

15 35. Moreover, based on information and belief, DEFENDANTS failed to compensate
16 Aggrieved Employees for time they were required to spend completing training and certification
17 and/or the onboarding process. Based on information and belief, DEFENDANTS required
18 Aggrieved Employees to review and sign various types of policies and documents, including but not
19 limited to, safety guidelines/safety awareness certifications, employee time-keeping policies, among
20 other documents, but they were not paid for all time spent reviewing and/or completing certification
21 as directed by DEFENDANTS. Based on information and belief, DEFENDANTS had and continue
22 to have a uniform policy and practice of requiring Aggrieved Employees to complete mandatory
23 off-the-clock administrative tasks, onboarding, training, certification, and/or other tasks without
24 compensating for all hours worked. DEFENDANTS' failure to pay for all time worked by virtue
25 of, including but not limited to, its time-rounding practices and only paying for scheduled hours
26 resulted in the underpayment of minimum wages owed to other Aggrieved Employees as well as
27 unpaid overtime wages for those other Aggrieved Employees who worked more than eight (8) hours
28 in a day and/or forty hours in a week.

1 36. Based on information and belief, DEFENDANTS failed/fails to compensate
2 PLAINTIFF and other Aggrieved Employees for additional time spent performing pre-shift and/or
3 post-shift off-the-clock work/work outside of their scheduled shifts. Based on information and
4 belief, PLAINTIFF and other Aggrieved Employees were not compensated all owed minimum and
5 overtime wages for all time spent performing work duties outside of their scheduled shift(s) and/or
6 time spent on call. For example, PLAINTIFF was required to monitor his work phone and be on call
7 twenty-four hours per day. PLAINTIFF would regularly have to assist tenants and/or perform other
8 work duties after hours without being compensated for this on-call time/time spent performing work
9 duties outside of his scheduled shift times. Based on information and belief, DEFENDANTS failed
10 to compensate other Aggrieved Employees for on-call time and/or time spent performing work
11 duties outside of their scheduled shift times, in violation of California minimum wage and overtime
12 wage laws.

13 37. Based on information and belief, other Aggrieved Employees that were paid on a salary
14 basis and/or otherwise misclassified as exempt were also denied all owed minimum and overtime
15 wages due to DEFENDANTS' misclassification scheme.

16 38. Additionally, based on information and belief, DEFENDANTS instituted a commission-
17 based and or piece-rate-based compensation scheme that resulted in pay periods during which
18 Aggrieved Employees were denied the minimum wage for all hours worked. DEFENDANTS paid
19 Aggrieved Employees on a commissioned and or piece-rate basis, at least during some pay periods,
20 during the relevant time period. However, based on information and belief, DEFENDANTS failed
21 to separately compensate for all non-commission/non-piece rate related activities/all non-productive
22 time, including but not limited to, all rest breaks. DEFENDANTS' failure to separately so
23 compensate resulted in Aggrieved Employees not being paid for all hours worked in violation of
24 California minimum wage laws.

25 39. Based on information and belief, DEFENDANTS required/requires other Aggrieved
26 Employees to undergo Covid testing outside of their scheduled shift times without compensating
27 other Aggrieved Employees for the travel time to/from the testing sites, time spent waiting for the
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1 tests to be performed and/or time spent undergoing testing/fulfilling DEFENDANTS' testing
2 requirements, resulting in significant off-the-clock work and unpaid minimum and overtime wages.

3 40. Based on information and belief, DEFENDANTS had and has a policy and practice of
4 unlawfully crediting lodging against the minimum wages owed to other Aggrieved Employees,
5 resulting in the underpayment of minimum wages owed to Aggrieved Employees. For example,
6 based on information and belief, DEFENDANTS credit lodging towards its minimum wage
7 obligations to Aggrieved Employees that exceeds the maximum allowable rental credit under
8 California law and/or DEFENDANTS fails to execute voluntary written agreement(s) to credit
9 lodging against its minimum wage obligations due to, including but not limited to, failure to
10 explicitly state that the rental credit is being applied towards the employer's minimum wage
11 obligations and/or failure to execute any voluntary written agreement, as required under California
12 law. See Section 10 of IWC Wage Order Section 5-2001 (and all applicable IWC Wage Orders).

13 41. Based on information and belief, DEFENDANTS had actual and/or constructive
14 knowledge that its time-rounding and auto-deduction policies and practices, failure to provide off-
15 duty meal periods, payment according to scheduled hours rather than actual hours worked, and /or
16 other mandated off-the-clock work and unlawful policies and practices described above resulted in
17 the underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees, in
18 violation of California's minimum wage laws.

19 42. Based on further information and belief, DEFENDANTS also failed to pay the
20 correct overtime and double time rates to Aggrieved Employees due to DEFENDANTS' failure to
21 incorporate all forms of non-discretionary compensation, including but not limited to, non-
22 discretionary bonus pay/incentive pay, commissions, and/or other forms of non-discretionary pay,
23 into the regular rate(s) of pay for purposes of calculating the owed overtime rate and the owed double
24 time rate resulting in the underpayment of overtime and double time wages owed. For example, as
25 explained, PLAINTIFF regularly earned non-discretionary bonuses/incentive pay and/or
26 commissions. Based on information and belief, DEFENDANTS failed to factor PLAINTIFF's non-
27 discretionary compensation into his regular rate of pay for purposes of calculating the owed
28 overtime rate and the owed double time rate. Based on information and belief, DEFENDANTS

1 failed to incorporate all non-discretionary compensation into the regular rate of pay for purposes of
2 paying overtime and double time wages to Aggrieved Employees.

3 43. DEFENDANTS' automatic deduction and rounding policies and practices as well as
4 mandated off-the-clock work described herein resulted in a failure to account for all hours worked
5 and deprived PLAINTIFF and Aggrieved Employees of all owed minimum wages and overtime
6 wages, including, but not limited to, double time wages.

7 44. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
8 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per day and for time
9 worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation
10 of California's overtime law.

11 45. Based on information and belief, DEFENDANTS had actual and/or constructive
12 knowledge that its time-rounding, payment according to scheduled hours rather than actual time
13 worked, auto-deduction policies, policies and practices that failed to relieve Aggrieved Employees
14 of all duties and employer control during unpaid meal periods, and other off-the-clock work policies
15 and practices described herein resulted in violations of California's minimum and overtime wage
16 laws and other violations described below.

17 46. **Failure to Compensate for Nonproductive Time.** On information and belief,
18 DEFENDANTS failed to compensate Aggrieved Employees who were paid on a piece rate and or
19 commission basis separately for rest periods and other nonproductive time, and/or failed to pay them
20 for this time at the correct rates, in violation of, including but not limited to, Labor Code section
21 226.2. Based on information and belief, DEFENDANTS further failed to include the information
22 on these employees' wage statements required by this statute.

23 47. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
24 provide PLAINTIFF and the Aggrieved Employees with accurate wage statements that complied
25 with Labor Code section 226. DEFENDANTS provided wage statements that failed to indicate the
26 total wages earned (including meal and rest period premiums), and total hours worked by
27 PLAINTIFF and other Aggrieved Employees (by virtue of the automatic deduction for meal periods,
28 rounding, payment according to scheduled hours worked and other off-the-clock work described

1 herein). Accordingly, DEFENDANTS violated Labor Code section 226 by providing wage
2 statements that were inaccurate and failed to include all of the statutorily required information.

3 48. Separately, based on information and belief, DEFENDANTS violated Labor Code
4 section 226 because the wage statements issued by DEFENDANTS failed to list the correct name
5 and address of the legal entity that is the employer. As a result, the wage statements provided to
6 PLAINTIFF and other Aggrieved Employees were not accurate and did not include all of the
7 statutorily required information, including but not limited to the name and address of the legal entity
8 that is the employer.

9 49. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
10 statements to Aggrieved Employees that failed to list all applicable hourly rates in effect during the
11 pay period, due to, including but not limited to, failing to list an hourly rate/overtime rate at all
12 and/or failing to list the correct overtime rate because DEFENDANTS did not incorporate all non-
13 discretionary compensation, such as, but not limited to, non-discretionary bonuses/incentive pay
14 and/or commissions and/or other non-discretionary compensation into the regular pay rate for
15 purposes of calculating the owed overtime rate.

16 50. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as they
17 could not easily determine whether they received all wages owed to them and whether they were
18 paid for all hours worked. Moreover, as a result of DEFENDANTS' failure to list the correct legal
19 entity that is the employer, PLAINTIFF and other Aggrieved Employees have suffered injury as
20 there was confusion as to which entity to contact regarding any question(s) they had about wages
21 paid and unpaid.

22 51. **Sick Leave Violations:** DEFENDANTS violated California's paid sick leave laws
23 including, Labor Code sections 245-248.5; DEFENDANTS failed to provide proper sick leave to
24 Aggrieved Employees, due to, including but not limited to, DEFENDANTS' failure to account for
25 the actual hours worked by virtue of DEFENDANTS' failure to relieve Aggrieved Employees of all
26 duties and employer control during any unpaid meal periods, mandated pre-shift/post-shift off-the-
27 clock work, payment according to scheduled hours rather than actual time worked and time-
28 rounding policies and practices, as described herein, and or DEFENDANTS' failure to incorporate

1 all forms of non-discretionary remuneration, including but not limited to, non-discretionary
2 bonuses/incentive pay, commission pay, and/or other non-discretionary compensation into the sick
3 pay calculation. DEFENDANTS further failed to put the Aggrieved Employees on notice of their
4 paid sick leave rights - or thereby putting their entitlement to sick leave in a Labor Code section
5 2810.5 notice. DEFENDANTS failed to maintain accurate records documenting the hours worked
6 and paid sick days accrued and used by the Aggrieved Employees, in violation of Labor Code
7 section 247.5. DEFENDANTS failed to provide notice of the accrued sick leave amount or balance
8 left for the Aggrieved Employees by failing to provide Aggrieved Employees with a wage statement
9 or separate writing showing the balance of accrued or available sick leave, or paid time off leave
10 provided in lieu of sick leave, on their designated pay dates with the their payment of wages, as
11 required under Labor Code section 246, and thus affected Aggrieved Employees' intelligent exercise
12 of their paid sick leave. But for this failure, Aggrieved Employees who are no longer employed with
13 DEFENDANTS would have used their paid sick leave at least prior to their respective separations,
14 or on several occasions after receiving notice of the available sick leave.

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

23 **53.** DEFENDANTS have failed and continue to fail to keep accurate and complete
24 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
25 period deductions, failure to relieve PLAINTIFF and other Aggrieved Employees of all duties and
26 employer control during unpaid meal periods, failure to record the true start and end times of meal
27 periods, shift start times and shift end times, and other mandated off-the-clock work policies and
28 practices described herein.

1 54. Additionally, DEFENDANTS failed and continue to fail to keep accurate records and
2 issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and other
3 Aggrieved Employees.

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

13 **56. Failure to Reimburse Business Expenses.** DEFENDANTS also failed to compensate
14 PLAINTIFF and other 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 PLAINTIFF and other Aggrieved Employees were improperly required to provide and maintain
17 work tools that are supposed to be the responsibility of the employer. DEFENDANTS shifted its
18 costs of doing business onto PLAINTIFF and other Aggrieved Employees by requiring them to pay
19 for its business expenses, including but not limited to, use of PLAINTIFF's and other Aggrieved
20 Employees' personal mobile phones/mobile devices/personal computers and costs associated with
21 the purchase and/or maintenance of work uniforms/work clothing and shoes and/or safety/protective
22 gear. For example, at times, PLAINTIFF received work-related calls and messages to his personal
23 phone from managers and/or supervisors, including but not limited to, regarding scheduling/other
24 work tasks. PLAINTIFF was not reimbursed for these business expenses. Based on information
25 and belief, other Aggrieved Employees also received work-related calls and/or messages to their
26 personal cell phones/mobile devices without receiving any reimbursement from DEFENDANTS.
27 Based on further information and belief, DEFENDANTS did not reimburse Aggrieved Employees
28

1 for the costs they incurred in having to purchase/maintain/repair their own work tools, including but
2 not limited to, cleaning supplies and/or maintenance supplies they used to perform their job duties.

3 57. Based on further information and belief, PLAINTIFF and other Aggrieved Employees
4 incurred expenses associated with being required by DEFENDANTS to use their personal vehicles
5 for work but did not receive full reimbursement from DEFENDANTS for the costs they incurred in
6 connection therewith. For example, based on information and belief, at times, DEFENDANTS
7 purported to compensate PLAINTIFF for the personal vehicle-related expenses he was required to
8 incur, but the amount DEFENDANTS' offered fell far below the Internal Revenue Service (IRS)
9 mandated per mile compensation for the relevant time period and/or DEFENDANTS failed to
10 otherwise provide PLAINTIFF with full reimbursement for all personal vehicle expenses he was
11 required to incur in direct consequence of the discharge of his job duties.

12 58. Moreover, based on information and belief, Aggrieved Employees were not reimbursed
13 for the cost of undergoing Covid testing, including but not limited to, purchasing the test, and/or the
14 cost of traveling and/or using a personal vehicle to travel to and from a testing site.

15 59. DEFENDANTS' failure to provide PLAINTIFF and other Aggrieved Employees with
16 full reimbursement for all reasonable expenses associated with carrying out their duties required
17 that PLAINTIFF and other Aggrieved Employees subsidize and/or carry the burden of business
18 expenses in violation of Labor Code section 2802.

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

24 61. Therefore, DEFENDANTS' violations with respect to, including but not limited to, meal
25 periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and
26 unreimbursed business expenses result in separate violations of sections 1198 and 1199.

27 62. **Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
28

1 Code section 216 by failing to pay PLAINTIFF and other Aggrieved Employees for all hours
2 worked at the proper wage rate(s) and by failing to pay PLAINTIFF and Aggrieved Employees an
3 additional hour of pay for each meal/rest period not provided or that was otherwise unlawful. *Gould*
4 *v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

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

13 **64. Untimely Payment of Final Wages.** DEFENDANTS failed to timely pay Aggrieved
14 Employees all wages that were due and owing upon termination or resignation. Labor Code sections
15 201 and 202, together require employers to pay all wages immediately upon discharge and/or within
16 72 hours of an employees' resignation. Upon separation of employment, Aggrieved Employees'
17 final paychecks were not timely provided. Based on information and belief, DEFENDANTS did not
18 pay final wages in accordance with the timing requirements set forth in Labor Code sections 201
19 and 202. Based on information and belief, DEFENDANTS provide final wages to Aggrieved
20 Employees on the regular pay day without regard to the timing requirements of Labor Code sections
21 201-202.

22 **65.** Moreover, upon separation of employment, Aggrieved Employees' final paychecks,
23 once provided, did not include all wages owed as they were devoid of, including but not limited to,
24 all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed paid time
25 off wages at the properly accrued rates. DEFENDANTS also willfully failed to timely pay all wages
26 upon separation of employment because it was not paying sick pay at the appropriate rates due to,
27 including but not limited to, failing to incorporate all non-discretionary compensation into the sick
28 pay calculation.

1 **66. False Representations About Employment to Induce Relocation.** Based on
2 information and belief, DEFENDANTS have a policy and practice of knowingly making false
3 representations to Aggrieved Employees regarding obtaining/continued employment, the nature of
4 work to be performed and/or the terms of their compensation to influence, persuade or engage
5 Aggrieved Employees to relocate/move for purposes of employment, in violation of California law,
6 including but not limited to, Labor Code section 970.

7 **67. Failure to Provide Written Commission Agreements.** Based on information and
8 belief, DEFENDANTS failed to provide Aggrieved Employees who were compensated on a
9 commission basis with proper written commission agreements, in violation of Labor Code section
10 2751.

11 **68. Unlawful Agreements-Unlawful Criminal and Financial Background Checks.**
12 Based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved
13 Employees to agree in writing to unlawful conditions of employment, such as, but not limited to,
14 unlawful criminal and/or financial checks, unlawful confidentiality agreements, and/or unlawful
15 non-compete agreements and/or unlawful lodging/compensation agreements and/or unlawful
16 commission agreements as a condition of obtaining and/or continuing employment in violation of
17 Labor Code section 432.5. Based on further information and belief, DEFENDANTS also required
18 PLAINTIFF and other Aggrieved Employees to agree in writing to unlawful background checks not
19 in conformity with the requirements of Investigative Consumer Reporting Agencies Act, Civil Code
20 sections 1786, et seq. ("ICRAA") and/or the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et
21 seq. ("FCRA"), in violation of Labor Code section 432.5. Based on information and belief,
22 DEFENDANTS asked about arrests not resulting in convictions on its employment application, in
23 violation of Labor Code section 432.7 and or otherwise unlawfully asked about criminal
24 history/unlawfully required the disclosure of criminal history prior to extending a conditional offer
25 of employment and required PLAINTIFF and other Aggrieved Employees to agree in writing to the
26 unlawful disclosures as a condition of employment, in violation of Labor Code section 432.5.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE**

3 **SECTIONS 2698, ET SEQ.**

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

6 69. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

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

28 73. Employers must pay employees an additional hour of wages at the employees' regular

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

7 74. DEFENDANTS have a consistent policy and practice of not providing lawful meal
8 periods to PLAINTIFF and other Aggrieved Employees and/or providing compensation in lieu
9 thereof. As explained above, PLAINTIFF and other Aggrieved Employees were consistently unable
10 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
11 forced to take late meal periods, interrupted meal periods and/or work through part or all their
12 purported meal periods. Moreover, DEFENDANTS failed to keep accurate records of meal period
13 start and end times.

14 75. Based on information and belief, DEFENDANTS rounded the start and end times of
15 employees’ meal periods and/or automatically deducted thirty minutes per shift despite having
16 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
17 receive compliant meal periods.

18 76. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal periods
19 in violation of California law or failed to pay the proper meal period premium for failure to
20 incorporate all non-discretionary remuneration, including but not limited to, non-discretionary
21 bonuses/incentive pay, piece-rate/commission pay and/or other non-discretionary into the regular
22 rate of compensation for purposes of calculating the owed meal period premium.

23 77. These unlawful meal period policies and practices result in violations of Labor Code
24 sections 226.7, 512, and 1198-1199, and all applicable wage orders, section 11. These violations
25 subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1 and 2699, and all
26 applicable Wage Orders, section 20. These practices result in further violations such as violations
27 of Labor Code section 1174 as discussed above, 1198-1199, 226.6 and other violations discussed
28 below.

1 **78. Rest Period Violations.** Labor Code section 226.7 and all applicable IWC Wage Orders
2 require an employer to authorize or permit an employee to take a rest period of ten (10) net minutes
3 for every four hours worked or major fraction thereof. Such rest periods must be in the middle of
4 the four-hour period "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53
5 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute
6 paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more
7 than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to
8 14 hours. (Id. at 1029). The rest period requirement obligates employers to permit and authorize
9 employees to take off-duty rest periods, meaning employers must relieve employees of all duties
10 and relinquish control over how employees spend their time. *Augustus v. ABM Security Services,*
11 *Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the employer
12 must pay the employee one hour of pay at the employee's regular rate of compensation for each
13 workday the employer did not provide at least one legally required rest period, pursuant to Labor
14 Code section 226.7, and all applicable IWC Wage Orders, section 12(B).

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

20 80. Moreover, based on information and belief, DEFENDANTS failed to pay PLAINTIFF
21 and other Aggrieved Employees an additional hour of pay at PLAINTIFF's and other Aggrieved
22 Employees' respective regular rates of compensation for each missed or improper rest period.
23 DEFENDANTS either failed to pay any rest period premium at all or failed to pay the proper rest
24 period premium for failure to incorporate all non-discretionary remuneration, including but not
25 limited to, non-discretionary bonuses/incentive pay and/or commissions and/or other non-
26 discretionary compensation into the regular rate of compensation for purposes of calculating the
27 owed rest period premium.

28 81. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and all

1 applicable IWC Wage Orders, section 12. These violations subject DEFENDANTS to civil penalties
2 under Labor Code sections 558 and 2699, and all applicable Wage Orders, section 20.

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

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

17 84. PLAINTIFF and other Aggrieved Employees were non-exempt employees who
18 regularly worked time for which they were not compensated, resulting in unpaid minimum wages
19 as well as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)
20 hours per week or more than eight (8) hours in a workday or seven (7) consecutive days in a
21 workweek. Aggrieved Employees who worked more than twelve hours in a workday or more than
22 eight (8) hours on the seventh consecutive day of work in a workweek were also denied "double
23 time" wages due to, including but not limited to, DEFENDANTS' failure to relieve Aggrieved
24 Employees of all duties and employer control during any unpaid meal periods, rounded time entries
25 and payment of wages according to scheduled hours worked rather than actual time worked and
26 other policies and practices mandating off-the-clock work as described herein.

27 85. As explained above, DEFENDANTS failed to compensate PLAINTIFF and other
28

1 Aggrieved Employees for all hours worked by virtue of DEFENDANTS' automatic deductions and
2 time rounding policies, payment according to scheduled hours worked instead of actual time
3 worked, mandated pre-shift/post shift/ and/or other off-the-clock work policies and/or practices and
4 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
5 unlawful practices for missed or improper meal periods. This regular performance of off-the-clock
6 work resulted in the underpayment of minimum wages owed to Aggrieved Employees, the
7 underpayment of overtime wages for those Aggrieved Employees who worked more than eight (8)
8 hours per workday or more than forty per week, the underpayment of "double time" wages for those
9 Aggrieved Employees who worked more than twelve (12) hours per workday or more than eight (8)
10 hours on the seventh consecutive day of work, as well as record-keeping violations.

11 86. Based on further information and belief, DEFENDANTS had and have a policy and
12 practice of unlawfully crediting lodging against the minimum wages owed to Aggrieved Employees,
13 resulting in the underpayment of minimum wages owed to Aggrieved Employees, in violation of
14 California minimum wage law, including but not limited to, Section 10 of IWC Wage Order Section
15 5-2001 (and all applicable IWC Wage Orders).

16 87. Based on information and belief, DEFENDANTS further violated California's overtime
17 wage laws by, including but not limited to, failing to incorporate all non-discretionary
18 compensation, including but not limited to, non-discretionary bonus compensation/incentive pay
19 and/or other non-discretionary compensation into the regular pay rate used to calculate the overtime
20 rate of pay. Failing to include all non-discretionary compensation into the regular pay rate used to
21 calculate the owed overtime rate resulted in a miscalculation of the overtime wage rate, resulting in
22 the underpayment of overtime (and "double time") wages owed to Aggrieved Employees.

23 **88. Failure to Compensate for Nonproductive Time.** Labor Code section 226.2 requires
24 an employer to pay employees compensated on a piece-rate basis separately for rest and recovery
25 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
26 employer to include on the wage statements for these employees the total hours of compensable rest
27 and recovery period, the total hours for other non-productive time, the rates of compensation for
28 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees

1 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
2 higher of: (i) an average hourly rate determined by dividing the total compensation for the
3 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
4 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
5 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
6 employees compensated on a commission basis.

7 89. During the relevant period, DEFENDANTS failed to comply with Labor Code section
8 226.2. Specifically, based on information and belief, DEFENDANTS failed to compensate
9 Aggrieved Employees who were paid on a piece rate and or commission basis separately for rest
10 periods and/or other nonproductive time, and/or failed to pay them for this time at the correct rates.
11 Based on information and belief, DEFENDANTS further failed to include the information on these
12 Aggrieved Employees' wage statements required by this statute.

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

23 91. DEFENDANTS knew or had reason to know Aggrieved Employees were working
24 during unpaid meal periods, prior to clocking in/after clocking out/ otherwise working off-the-clock
25 and not being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to
26 provide PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the
27 wage statements provided by DEFENDANTS do not accurately reflect, inter alia, the correct total
28 hours worked. Due to, including but not limited to, DEFENDANTS' time-rounding and auto-

1 deduction policies and practices, payment according to scheduled hours rather than actual hours
2 worked, and other mandated off-the-clock work policies and practices described herein,
3 DEFENDANT'S wage statements fail to reflect the true total hours worked by PLAINTIFF and the
4 Aggrieved Employees worked, as required under Labor Code section 226(a). Failure to list all hours
5 worked on a wage statement, gives rise to an inference of injury under Labor Code section 226
6 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

7 92. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
8 statements to Aggrieved Employees that failed to list all applicable hourly rates in effect during the
9 pay period, due to, including but not limited to, failing to list an hourly rate/overtime rate at all
10 and/or failing to list the correct overtime rate because DEFENDANTS did not incorporate all non-
11 discretionary compensation, such as, but not limited to, non-discretionary bonuses/incentive pay
12 and/or commission pay and/or other non-discretionary compensation into the regular pay rate for
13 purposes of calculating the owed overtime rate.

14 93. DEFENDANTS' failure to accurately list, including but not limited to, all hours worked
15 on all wage statements caused confusion to PLAINTIFF and caused and continues to cause
16 confusion to other Aggrieved Employees over whether they received all wages owed to them.

17 94. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
18 they could not easily determine whether they received all wages owed to them and whether they
19 were paid for all hours worked.

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

24 96. These violations subject DEFENDANTS to civil penalties under Labor Code section
25 226. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay
26 period during which the statute provisions were violated. ¹

27 **97. Sick Leave Violations.** DEFENDANTS violated California's paid sick leave

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¹ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation")

1 laws including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to
2 provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
3 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (by
4 virtue of DEFENDANTS' meal period auto-deduction and time rounding practices and off-the-
5 clock work described herein), and/or failure to incorporate all forms of non-discretionary
6 remuneration into the sick pay calculation.

7 98. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved
8 Employees notice of their paid sick leave rights - or thereby putting their entitlement to sick
9 leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain
10 accurate records of used sick leave and the balance of paid sick leave left to the employees,
11 which affected PLAINTIFF and Aggrieved Employees' intelligent exercise of their paid sick
12 leave.

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

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

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

26 102. These practices violated California's sick leave laws, Labor Code section 245, et
27 seq.

28 103. On information and belief, PLAINTIFF alleges that all of these practices were

1 experienced and continue to be experienced by other Aggrieved Employees.

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

5 105. **Record-Keeping Violations.** California Labor Code sections 226 and 1174
6 require DEFENDANTS to keep "accurate and complete" payroll records showing, among other
7 things, the hours worked daily by all non-exempt employees. Section 7 of all applicable IWC
8 Wage Orders similarly requires employer to keep time records showing, inter alia, when the
9 employees begin and end each work period and reflecting the true start and end times during
10 which all owed meal periods are provided each day. At all relevant times, DEFENDANTS have
11 failed, and continue to fail, to keep the required time records, as DEFENDANTS have failed to
12 record the true start and end times of PLAINTIFF's and other Aggrieved Employees' workdays
13 and failed to record PLAINTIFF's and other Aggrieved Employees' meal periods.
14 DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and
15 the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all
16 applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under
17 the Labor Code, including without limitation sections 1174.5 and 2699. Each violation of each
18 Labor Code section and Wage Order provision, for each aggrieved employee, results in a
19 separate civil penalty.

20 106. **Unreimbursed Business Expenses.** California law requires employers to
21 indemnify their employees for all necessary expenditures incurred by the employee in direct
22 consequence of the discharge of their duties or of their obedience to the directions of the
23 DEFENDANTS. See Cal. Lab. Code section 2802(a) and all applicable Wage Orders, section
24 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses'
25 shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the
26 employee enforcing the rights granted by this section." Cal. Lab. Code section 2802(c).
27 Moreover, "any contract or agreement, express or implied, made by any employee to waive the
28 benefits of this article or any part thereof, is null and void, and this article shall not deprive any

1 employee or his personal representative of any right or remedy to which he is entitled to under
2 the laws of this State." See Cal. Lab. Code section 2804. Among other things, under California
3 law, when tools or equipment are required by the employer or are necessary to the performance
4 of a job, such tools and equipment shall be provided and maintained by employer, except that
5 an employee whose wages are at least two (2) times the minimum wage provided herein may
6 be required to provide and maintain hand tools and equipment customarily required by the trade
7 or craft. See applicable IWC Wage Order, section 9 (b). Among other things, under California
8 law, when employees must use their personal cellphones for work-related purposes, the
9 employer must reimburse them for a reasonable percentage of their cell phone bills. See
10 *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show
11 liability, an employee will only need to show that he or she was required to use their personal
12 cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California
13 law also requires employer to reimburse employees for automobile expenses incurred for the
14 business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle.
15 See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

16 107. At all relevant times, PLAINTIFF and other Aggrieved Employees were
17 improperly required to provide and maintain work tools that are supposed to be the
18 responsibility of the employer, including but not limited to, use of PLAINTIFF's and other
19 Aggrieved Employees' personal mobile phones/mobile devices/personal computers and/or
20 costs associated with the purchase and/or maintenance of work uniforms/work clothing and
21 shoes and/or safety/protective gear.

22 108. Moreover, based on information and belief, Aggrieved Employees were not
23 reimbursed for the cost of undergoing Covid testing, including but not limited to purchasing
24 the test, and/or the cost of traveling and/or using a personal vehicle to travel to and from a
25 testing site.

26 109. Moreover, Aggrieved Employees were improperly required to incur expenses for
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1 DEFENDANTS' business use of their personal vehicles, without receiving any and/or full
2 reimbursement from DEFENDANTS for this personal vehicle usage, including but not limited
3 to, reimbursement for mileage, gas, and the wear and tear on the vehicles.

4 110. DEFENDANTS' failure to provide Aggrieved Employees with full
5 reimbursement for all reasonable expenses associated with carrying out their duties required
6 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation
7 of Labor Code section 2802 and section 9 of all applicable IWC Wage orders. Accordingly,
8 this constitutes a PAGA violation based on violations of Labor Code section 2802 and section
9 9 of the applicable wage order.

10 111. **Failure to Produce Records in Violation of Labor Code Sections 226(b)-(c),**
11 **1198.5, and 432.** *Time and Pay Records.* Labor Code section 226 and all applicable IWC Wage
12 Orders, section 7 require that employers keep the following information on file for each employee
13 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
14 and the corresponding number of hours worked by the employee at each hourly rate, when the
15 employee begins and ends each work period (including meal periods) and split intervals; total hours
16 worked by the employee; all deductions; gross wages earned; and net wages earned. Section (b) of
17 Labor Code section 226 further requires employers to "afford current and former employees the
18 right to inspect or receive a copy of records pertaining to their employment upon reasonable request
19 to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives
20 a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining
21 to a current or former employee shall comply with the request as soon as practicable, but no later
22 than 21 calendar days from the date of the request. A violation of this subdivision is an infraction."
23 An employer's failure to comply within this timeframe entitles a current or former employee to
24 recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

25 112. *Personnel Records.* In addition to their right to time and pay records, employees, and
26 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
27 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
28 section 432 further specifies that employers must furnish copies of all employment records bearing

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

6 113. Based on information and belief, DEFENDANTS fail to timely produce or make
7 available Aggrieved Employees' complete personnel records and/or payroll records when requested
8 pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These
9 violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

10 114. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
11 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
12 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
13 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
14 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
15 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and
16 unreimbursed business expenses, result in separate violations of sections 1198 and 1199, which
17 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

18 115. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
19 employer's refusal to pay wages due and payable and/or DEFENDANTS' denial of the validity of
20 any claim to wages due. DEFENDANTS have violated this section by, inter-alia, failing to pay
21 PLAINTIFF and other Aggrieved Employees for all hours worked at the proper wage rate and by
22 failing to pay PLAINTIFF and other Aggrieved Employees an additional hour of premium wages
23 for each meal or rest period not provided/that was invalid. These violations subject DEFENDANTS
24 to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty,
25 for each aggrieved employee, for each pay period during which the statute provisions were violated.

26 116. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
27 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
28 wages. As described above, DEFENDANTS willfully and systematically denied the Aggrieved

1 Employees minimum and overtime wage compensation for all hours worked which resulted in the
2 payment of less than statutorily required wages to them. DEFENDANTS acted with the intent to
3 deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages,
4 to which they were entitled to under California law.

5 **117. Untimely Wages at Termination.** Labor Code section 201 requires DEFENDANTS
6 to pay all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
7 Code section 202 extends those provisions to employees who resign. For all Aggrieved Employees
8 no longer employed by DEFENDANTS, DEFENDANTS have an ongoing failure to pay such
9 aggrieved employees all wages earned and unpaid at the time of discharge or resignation, due to
10 DEFENDANTS' failure to pay, inter alia, all owed minimum wages, overtime wages, premium
11 wages, commissions, bonuses/incentive pay, vacation pay, and sick leave wages and/or all paid time
12 off at the properly accrued rates within the time limits prescribed by California law. These violations
13 subject DEFENDANTS to civil penalties under the Labor Code, including without limitation Labor
14 Code sections 203, 210, 256 and 2699. Each violation results in a separate civil penalty, for each
15 Aggrieved Employee for each pay period during which the statutory provisions were violated.

16 **118. False Representations About Employment to Induce Relocation.** Labor Code
17 section 970 prohibits an employer from knowingly making false representations about the nature or
18 existence of work, continued employment and/or compensation to induce an employee to
19 move/relocate in reliance thereon. Specifically, Labor Code section 970 provides:

20 No person, or agent or officer thereof, directly or indirectly, shall influence,
21 persuade, or engage any person to change from one place to another in this
22 State or from any place outside to any place within the State, or from any place
23 within the State to any place outside, for the purpose of working in any branch
24 of labor, through or by means of knowingly false representations, whether spoken,
25 written, or advertised in printed form, concerning either:

26 (a) The kind, character, or existence of such work;

27 (b) The length of time such work will last, or the compensation therefor;

28 **119.** Based on information and belief, DEFENDANTS had and have a policy and practice

1 of knowingly making false representations to Aggrieved Employees regarding obtaining/continued
2 employment, the nature of work to be performed and/or the terms of their compensation to influence,
3 persuade or engage its employees to relocate/move for purposes of employment, in violation of
4 California law, including but not limited to, Labor Code section 970.

5 120. **Failure to Provide Commission Agreements:** Labor Code section 2751 requires
6 that all commission contracts "be in writing and . . . set forth the method by which the commissions
7 shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers
8 must also "give a signed copy of the contract to every employee who is a party [to the contract] and
9 . . . obtain a signed receipt for the contract from each employee." Id. section 2751(b).

10 121. Based on information and belief, DEFENDANTS failed to provide Aggrieved
11 Employees who were compensated on a commission basis with proper written commission
12 agreements, in violation of Labor Code section 2751.

13 122. **Background Check Violations/Unlawful Agreements/Unlawful Inquiries into**
14 **Criminal History.** Labor Code section 432.5 provides that "no employer...shall require any
15 employee or applicant for employment to agree, in writing, to any term or condition which is known
16 by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS
17 required PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of
18 employment, such as, but not limited to, unlawful criminal and/or financial checks, unlawful
19 confidentiality agreements, and/or unlawful non-compete agreements and/or unlawful
20 lodging/compensation agreements and/or unlawful commission agreements as a condition of
21 obtaining and/or continuing employment in violation of Labor Code section 432.5.

22 123. The California Labor Code places certain procedural and substantive limits on an
23 employer's ability to conduct employee background checks and on how employers can use the
24 information they obtain through these background checks. Upon information and belief,
25 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit or agree to submit
26 to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
27 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
28 and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in

1 writing to unlawful background checks not in conformance with the requirements of the
2 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
3 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
4 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of
5 employment, in violation of Labor Code section 432.5. Based on information and belief,
6 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to agree in writing to a
7 background check which failed to abide by the requirements set forth in CA Civil Code section
8 1786, et seq. and 15 U.S.C. section 1681, et seq., by including but not limited to, failing to provide
9 a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information
10 (including but not limited to, information that is solely relevant to applicants from different states),
11 failing to provide a lawful purpose for the background check, failing to provide a summary of rights
12 under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request
13 a copy of the report, and failing to properly obtain authorization or consent to such a background
14 check, and thus was an unlawful background check. Based on information and belief,
15 DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in writing to
16 provide ongoing consent to DEFENDANTS to conduct background checks throughout the duration
17 of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in
18 a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to
19 an unlawful provision as a condition of employment.

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

24 125. Upon information and belief, DEFENDANTS, in violation of California law,
25 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
26 ("FEHA"), asked PLAINTIFF and Aggrieved Employees about convictions prior to extending an
27 offer of employment and/or otherwise impermissibly inquired into criminal history on its
28 employment application in violation of California law.

1 126. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
2 Code 432.7. By asking about convictions at the application phase or prior to extending an
3 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
4 Labor Code 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to disclose
5 arrests and/or convictions as a condition of employment.

6 127. These violations subject DEFENDANTS to civil penalties under the Labor Code,
7 including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each
8 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
9 civil penalty.

10 128. Under the provisions of PAGA and the above-mentioned Labor Code sections,
11 including but not limited to, Labor Code sections 201, 202, 203, 210, 216, 223, 225.5, 226, 226.3,
12 226.7, 245-248.5, 256, 432.5, 432.7, 510, 511, 512, 515, 558, 558.1, 970, 1024.5, 1174, 1194, 1197,
13 1197.1, 1198, 1199, 2699, 2699.3, 2751, 2802, 2810.5 and all applicable Wage Orders as well as all
14 interpretations of these laws by California Courts and administrative bodies, as well as any other
15 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: June 7, 2022

CROSNER LEGAL, PC

By: 
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Zachary M. Crosner, Esq.
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MATT DEL CAMPO