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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 IVAN PEREZ, on behalf of himself, the
13 State of California, and others similarly
situated and aggrieved,

14 Plaintiff,

15 v.

16 MARTINEZ ONTIME PARCEL, INC, a
17 California corporation; and DOES 1-100,
18 inclusive,

19 Defendants.
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Case No.: **22STCV16280**

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

1 Plaintiff IVAN PEREZ ("PLAINTIFF" or "PLAINTIFF PEREZ"), an individual on behalf
2 of himself, the State of California, and all other Aggrieved Employees (defined below), hereby files
3 this Complaint against Defendants MARTINEZ ONTIME PARCEL, INC, a California corporation;
4 and DOES 1-100, inclusive, (collectively referred to herein as "DEFENDANTS"). PLAINTIFF is
5 informed and believes, and on the basis of that information and belief, alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

23 4. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF was
24 employed by DEFENDANTS in the State of California as a non-exempt employee during the
25 relevant period. PLAINTIFF worked for DEFENDANTS as a delivery driver and/or other similar
26 title.

27 5. DEFENDANT MARTINEZ ONTIME PARCEL, INC is a California corporation that at
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1 all relevant times, was authorized to do business within the State of California and is doing business
2 within the State of California. DEFENDANTS and their managing agents own, operate, or
3 otherwise manage a logistics company that provides transportation and storage services. Based on
4 information and belief, DEFENDANTS provide courier services throughout Southern California,
5 among other transportation and storage services.

6 6. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
7 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant by
8 said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for
9 the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this Complaint to
10 reflect the true names and capacities of the Doe Defendants when such identities become known.

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

21 **JOINT LIABILITY**

22 8. Under California law, the definition of the term "to employ" is broadly construed under
23 the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise
24 control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3) to engage,
25 thereby creating a common law employment relationship. See *Martinez v. Combs*, 49 Cal.4th 35, 64
26 (2010). One reason that the IWC defined "employer" in terms of exercising control was to reach
27 situations in which multiple entities control different aspects of the employment relationship.
28 Supervision of the work, in the specific sense of exercising control over how services are properly

1 performed, is properly viewed as one of the "working conditions" mentioned in the wage order. *Id.*
2 at 76. A joint employer relationship exists when one entity hires and pays a worker, and the other
3 entity supervises the work. *Id.*

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

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

17 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant to
18 this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
19 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
20 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
21 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
22 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
23 Employees. Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS
24 created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and
25 overtime pay, time-keeping practices, meal and rest periods, payment of wages, hours, background
26 check inquiries and practices, and working conditions that were distributed to, and/or applied to
27 PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS uniformly
28 compensated and controlled the wages of Plaintiff and the Aggrieved Employees in a uniform

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

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

15 **PAGA ALLEGATIONS**

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

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

22 14. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
23 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
24 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
25 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
26 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
27 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
28 Employees, as he was jointly employed by DEFENDANTS and is thereby affected by one or more

1 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
2 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
3 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

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

5 15. On March 10, 2022, PLAINTIFF PEREZ, through his counsel, gave written
6 notice by online filing with the California Labor and Workforce Development Agency ("LWDA")
7 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
8 allegations alleged in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's
9 claims for violations of the California Labor Code and the applicable wage orders on behalf of
10 himself, the State of California and other Aggrieved Employees. The LWDA assigned PLAINTIFF
11 the following case number: LWDA-CM-872851-22. PLAINTIFF, through his counsel, also sent
12 the PAGA Notice to DEFENDANTS via certified mail, on March 10, 2022.

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

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

21 **FACTUAL ALLEGATIONS**

22 18. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were employed
23 by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised control over
24 PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them to work.
25 PLAINTIFF and the Aggrieved Employees worked in various job positions, including but not
26 limited to, delivery drivers, dispatchers, office/clerical workers, and/or other similar titles.

27 19. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during the
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1 PAGA Period and was subject to one or more of the Labor Code violations alleged herein.
2 PLAINTIFF worked for DEFENDANTS as a delivery driver and/or other similar title for
3 approximately two (2) years, until PLAINTIFF went out on medical leave, in or about April 2021.

4 20. PLAINTIFF typically worked at least ten (10) to twelve (12) hours per day, at least
5 five (5) to six (6) days per week.

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

16 22. PLAINTIFF and other Aggrieved Employees were consistently unable to take timely,
17 thirty-minute, off-duty, uninterrupted meal periods due to the nature and constraints of their job
18 duties, lack of coverage/relief workers available and/or commentary from supervisors pressuring
19 them to take non-compliant breaks or skip breaks completely. Based on information and belief,
20 PLAINTIFF and other Aggrieved Employees were instructed by their supervisors to clock out for
21 meal periods but to continue working due to lack of coverage/ lack of relief workers and/or the need
22 to complete work tasks. For example, oftentimes, PLAINTIFF was forced to take a late, short,
23 and/or interrupted meal period to keep up with his own delivery schedule and/or because he had to
24 assist another driver who was behind on deliveries. PLAINTIFF's supervisor would require that
25 PLAINTIFF clock out for meal periods but continue working during purported meal periods. Based
26 on information and belief, DEFENDANTS applied these same policies and practices of automatic
27 deductions for missed, interrupted, and/or on-duty meal periods to the other Aggrieved Employees
28 that it applied to PLAINTIFF.

1 23. DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF
2 and other Aggrieved Employees of all duties and DEFENDANTS' control during unpaid meal
3 breaks. Based on information and belief, DEFENDANTS had a uniform policy and practice of
4 requiring PLAINTIFF and other Aggrieved Employees to remain tethered to their worksite and/or
5 work communication devices during meal periods. Based on information and belief, Aggrieved
6 Employees were required to monitor work communication devices during purportedly off-duty meal
7 periods. For example, at times, PLAINTIFF's meal breaks were interrupted with texts/calls he was
8 required to monitor from dispatch about changes in PLAINTIFF's delivery schedule/other work
9 tasks. Other times, PLAINTIFF would have to cut his meal break short/skip his meal break
10 completely because there simply was not enough time to stop and eat before his next delivery was
11 due. PLAINTIFF's supervisor would instruct PLAINTIFF to clock out for meal periods but to
12 continue working. Based on information and belief, other Aggrieved Employees were also unable
13 to take timely meal periods and/or were interrupted during purported meal period(s). Based on
14 further information and belief, Aggrieved Employees were required to remain on DEFENDANTS'
15 premises and/or in close proximity to their assigned vehicles and/or were tethered to
16 DEFENDANTS' communication devices during purported meal periods, and thus remained
17 subjected to DEFENDANTS' control during meal periods.

18 24. Moreover, PLAINTIFF and other Aggrieved Employees were consistently suffered
19 and/or permitted to take meal periods past the fifth hour of work and/or had their meal periods
20 interrupted and/or cut short/skipped completely due to their need to complete their routes, meet high
21 delivery quotas and/or complete other work-related tasks. For example, PLAINTIFF estimates his
22 first meal periods were interrupted or skipped completely at least several times per month due to the
23 demanding nature and constraints of his job duties, lack of coverage and/or lack of relief workers
24 available. On information and belief, other Aggrieved Employees were also unable to take timely
25 thirty-minute meal periods due to the nature of their jobs, workload, and/or lack of relief workers.

26 25. Based on information and belief, DEFENDANTS implemented a policy and/or
27 practice of automatically deducting/requiring PLAINTIFF and other Aggrieved Employees to clock
28 out for at least thirty minutes per shift for these missed or noncompliant meal periods, despite having

1 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
2 receive compliant meal periods.

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

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

10 28. Moreover, DEFENDANTS failed to provide a second meal break to PLAINTIFF
11 and Aggrieved Employees that worked shifts of more than ten hours. DEFENDANTS failed to
12 provide PLAINTIFF and Aggrieved Employees with a second, duty-free, uninterrupted, thirty-
13 minute meal period even though PLAINTIFF and Aggrieved Employees worked more than ten
14 hours in a workday and thus were entitled to a second duty-free, uninterrupted, thirty-minute meal
15 period before the end of the tenth hour of work. Per DEFENDANTS' unlawful meal period policies
16 and practices, DEFENDANTS only provided a single meal period per shift during shifts lasting
17 longer than ten hours and that single meal period was usually non-compliant. For example, at times,
18 PLAINTIFF regularly worked more than ten or twelve hours per shift but was not provided with a
19 single compliant meal period during his shift. Furthermore, based on information and belief,
20 DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees an additional hour of
21 wages at their respective regular rates of pay for each workday a compliant meal period was denied.
22 DEFENDANTS either failed to pay Aggrieved Employees a meal period premium at all for each
23 workday a compliant meal period was denied or failed to pay the legally required meal period
24 premium for failure to incorporate all non-discretionary compensation, including but not limited to,
25 non-discretionary bonuses/incentive pay, shift differential pay, and/or other non-discretionary
26 compensation into the regular pay rate used to calculate the owed meal period premium.

27 29. For example, PLAINTIFF regularly earned shift differential pay and/or earned
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1 non-discretionary bonuses (e.g., non-discretionary flat-rate bonuses for working during peak
2 seasons on scheduled days off). Based on information and belief, DEFENDANTS failed to factor
3 PLAINTIFF's non-discretionary compensation into his regular rate of pay for purposes of
4 calculating the owed meal period premium. Based on information and belief, DEFENDANTS failed
5 to incorporate all non-discretionary compensation into the regular rate of pay for purposes of paying
6 the owed meal period premiums to Aggrieved Employees.

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

12 **31.** PLAINTIFF and other Aggrieved Employees were consistently unable to take a net, ten-
13 minute, off-duty rest period for every four (4) hours worked or major fraction thereof because of the
14 nature and constraints of their job duties and/or commentary from supervisors pressuring them to
15 take non-compliant rest breaks or skip rest breaks completely. PLAINTIFF and other Aggrieved
16 Employees were instructed by their supervisors to work through their rest periods due to lack of
17 coverage/lack of relief workers available and/or understaffing. PLAINTIFF and other Aggrieved
18 Employees were pressured to complete their work duties according to a designated schedule such
19 that rest breaks were only taken once jobs were completed/if time permitted. For example, based on
20 information and belief, PLAINTIFF and other Aggrieved Employees were pressured by their
21 supervisors to stay on their routes and/or otherwise continue working during their owed rest breaks
22 and were reprimanded for stopping to take rest breaks.

23 **32.** Based on information and belief, DEFENDANTS did not have a lawful policy,
24 instruction, or practice as to the taking, timing or duty-free nature of rest periods.

25 **33.** Based on information and belief, DEFENDANTS implemented policies and
26 practices that failed to relieve the Aggrieved Employees of all duties and employer control during
27 any rest periods. For example, based on information and belief, DEFENDANTS required
28 PLAINTIFF and other Aggrieved Employees to remain on the worksite premises and/or in close

1 proximity to their vehicles during any rest periods. As such, PLAINTIFF and other Aggrieved
2 Employees remained under DEFENDANTS' control during any rest periods, rendering said rest
3 periods on duty and therefore noncompliant with California rest period law. Despite not providing
4 PLAINTIFF and other Aggrieved Employees with all owed legally compliant rest periods,
5 DEFENDANTS did not pay PLAINTIFF and other Aggrieved Employees an additional hour of
6 wages at their respective regular rates of pay for any missed/non-compliant rest period.

7 **34. Unpaid Minimum Wages and Overtime Wages.** DEFENDANTS failed to
8 compensate all hours worked, including all owed minimum wages and overtime wages, including
9 double time wages. As explained above, PLAINTIFF and the other Aggrieved Employees were
10 regularly required to perform off-the-clock work by virtue of DEFENDANTS' automatic-deduction
11 policy for meal periods. On information and belief, the work time reported by PLAINTIFF and the
12 other Aggrieved Employees was rounded and automatically deducted for at least 30 minutes of
13 wages every day they worked for DEFENDANTS for meal periods that were short, not taken,
14 interrupted, or during which PLAINTIFF and the other Aggrieved Employees were not relieved of
15 all duties or employer control and/or were otherwise unlawful.

16 **35.** PLAINTIFF alleges on information and belief that DEFENDANTS implemented a time-
17 rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved
18 Employees of compensable time because the time-rounding system implemented by
19 DEFENDANTS would almost always, if not always, result in understating actual compensable work
20 time. Moreover, based on information and belief, DEFENDANTS had and continue to have a
21 continuous policy of paying PLAINTIFF and Aggrieved Employees for scheduled hours, rather than
22 actual hours worked. For example, for various diverse pay periods throughout the relevant period,
23 PLAINTIFF's wage statements show that DEFENDANTS rounded his total hours worked to at least
24 the nearest half or whole hour. DEFENDANTS' failure to pay for all time worked by virtue of its
25 time-rounding practices and/or practice of only paying for scheduled hours resulted in the
26 underpayment of minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid
27 overtime wages for those Aggrieved Employees who worked more than eight (8) hours in a day
28 and/or forty hours in a week.

1 36. Moreover, PLAINTIFF and other Aggrieved Employees were required to perform off-
2 the-clock work. For example, at times, DEFENDANTS paid PLAINTIFF for a scheduled ten hours
3 of assumed work per shift when PLAINTIFF was really working at least eleven to twelve hours
4 during those shifts.

5 37. Based on further information and belief, DEFENDANTS rounded the start and end
6 times of Aggrieved Employees' meal periods and shift start and end times resulting in PLAINTIFF
7 and other Aggrieved Employees not being paid for all time worked.

8 38. Based on information and belief, DEFENDANTS adjusted PLAINTIFF's and
9 other Aggrieved Employees' time entries and or instructed PLAINTIFF and other Aggrieved
10 Employees to record only the scheduled beginning and end times of their shifts rather than the actual
11 times PLAINTIFF and other Aggrieved Employees began and stopped working, resulting in
12 understating actual time worked and the underpayment of minimum and overtime wages owed to
13 the Aggrieved Employees.

14 39. Moreover, PLAINTIFF and other Aggrieved Employees were required to perform
15 additional off-the-clock work. For example, based on information and belief, DEFENDANTS did
16 not compensate Aggrieved Employees for time spent donning and doffing personal protective
17 equipment and/or uniforms during meal periods, rest periods, before the start of a scheduled shift,
18 and after completing a scheduled shift. Based on further information and belief, DEFENDANTS
19 required/requires Aggrieved Employees to undergo Covid testing outside of their scheduled shift
20 times without compensating Aggrieved Employees for the travel time to/from the testing sites, time
21 spent waiting for the tests to be performed and/or time spent undergoing testing/fulfilling
22 DEFENDANTS' testing requirements, resulting in significant off-the-clock work and unpaid
23 minimum and overtime wages.

24 40. Based on further information and belief, DEFENDANTS' electronic employee
25 time-keeping system regularly malfunctioned such that PLAINTIFF and other Aggrieved
26 Employees were often required to either reinitiate the system prior to being able to clock in and/or
27 were unable to clock in at all for the start of their shifts and/or to clock back in from meal periods,
28 resulting in consistent off-the-clock work and the underpayment of minimum and overtime wages

1 owed to PLAINTIFF and other Aggrieved Employees. PLAINTIFF and other Aggrieved
2 Employees experienced the same issues when clocking out for shifts and/or back in for meal periods.

3 41. Based on information and belief, DEFENDANTS engaged in systemic time-record
4 manipulation and time-shaving practices that resulted in the significant underpayment of minimum
5 and overtime wages owed to PLAINTIFF and other Aggrieved Employees. For example, based on
6 information and belief, PLAINTIFF's supervisor at times inputted false time entries for PLAINTIFF
7 and/or shaved time off PLAINTIFF's reported work time and compensated PLAINTIFF and other
8 Aggrieved Employees based only on scheduled hours rather than actual hours worked. This resulted
9 in consistent off-the-clock work and the underpayment of minimum and overtime wages owed to
10 PLAINTIFF and other Aggrieved Employees, as well as record-keeping and wage statement
11 violations.

12 42. Based on information and belief, during the relevant period, Aggrieved Employees
13 worked subject to an alternative work week schedule in which Aggrieved Employees were
14 scheduled to work ten (10) hours per shift, four (4) shifts per week. According to the California
15 Department of Industrial Relations Alternative Workweek Elections Database, DEFENDANTS
16 conducted an election to adopt a 4/10 alternative workweek schedule ("AWS") in 2018. The AWS
17 was approved in 2018. Pursuant to the AWS, DEFENDANTS were required to pay Aggrieved
18 Employees at their base rate(s) for the first ten (10) hours in a shift and required to pay 1.5 times the
19 base rate(s) for time worked over 40 hours in a week. However, based on information and belief, on
20 various diverse dates, PLAINTIFF and other Aggrieved Employees were sent home between one
21 (1) to two (2) hours before completing their ten-hour shifts. On such shortened shifts, PLAINTIFF
22 and other Aggrieved Employees were entitled to overtime pay at 1.5 times their regular rate(s) of
23 pay after the first eight (8) hours of work. Instead, DEFENDANTS paid Aggrieved Employees their
24 respective base rate(s) for all scheduled hours worked on the shortened shift(s) in violation of the
25 alternative workweek schedule, and in violation of California Labor Code sections 510, 511, the
26 applicable Wage Order, and Labor Code section 1198.

27 43. Based on further information and belief, DEFENDANTS also failed to pay the
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1 correct overtime and double time rates to PLAINTIFF and Aggrieved Employees due to
2 DEFENDANTS' failure to incorporate all forms of non-discretionary compensation, including but
3 not limited to, shift differential pay and/or non-discretionary bonus pay and/or other forms of non-
4 discretionary pay, into the regular rate(s) of pay for purposes of calculating the owed overtime rate
5 and the owed double time rate resulting in the underpayment of overtime and double time wages
6 owed. For example, as explained, PLAINTIFF regularly earned shift differential pay and/or earned
7 non-discretionary bonuses (e.g., non-discretionary flat-rate bonuses for working during peak
8 seasons on scheduled days off). Based on information and belief, DEFENDANTS failed to factor
9 PLAINTIFF's non-discretionary compensation into his regular rate of pay for purposes of
10 calculating the owed overtime rate and the owed double time rate. Based on information and belief,
11 DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate of pay
12 for purposes of paying overtime and double time wages to Aggrieved Employees.

13 44. DEFENDANTS' automatic deduction and rounding policies and practices as well as
14 mandated off-the-clock work described herein resulted in a failure to account for all hours worked
15 and deprived PLAINTIFF and Aggrieved Employees of all owed minimum wages and overtime
16 wages, including, but not limited to, double time wages. Moreover, PLAINTIFF and Aggrieved
17 Employees that were subject to an AWS were deprived of all owed overtime wages when required
18 to work shortened shifts as determined by DEFENDANTS.

19 45. Based on information and belief, DEFENDANTS had actual and/or constructive
20 knowledge that its auto-deduction and time-rounding policies, failure to provide full 30-minute off-
21 duty meal periods, off-the-clock work policies and practices, and violations of the AWS described
22 herein resulted in violations of California's minimum and overtime wage laws and other violations
23 described below.

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

28 47. Based on information and belief, DEFENDANTS had actual and/or constructive

1 knowledge that its time-rounding, payment according to scheduled hours rather than actual time
2 worked, auto-deduction policies, policies and practices that failed to relieve Aggrieved Employees
3 of all duties and employer control during unpaid meal periods, and other off-the-clock work policies
4 and practices described herein resulted in violations of California's minimum and overtime wage
5 laws and other violations described below.

6 **48. Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
7 provide PLAINTIFF and the Aggrieved Employees with accurate wage statements that complied
8 with Labor Code section 226. DEFENDANTS provided wage statements that failed to indicate the
9 total wages earned (including meal and rest period premiums), and total hours worked by
10 PLAINTIFF and other Aggrieved Employees (by virtue of the automatic deduction for meal periods,
11 rounding, and other off-the-clock work described herein). Accordingly, DEFENDANTS violated
12 Labor Code section 226 by providing wage statements that were inaccurate and failed to include all
13 of the statutorily required information.

14 49. Separately, based on information and belief, DEFENDANTS violated Labor Code
15 section 226 because the wage statements issued by DEFENDANTS failed to list the correct name
16 and address of the legal entity that is the employer. For example, some of DEFENDANTS' wage
17 statements list "Martinez Ontime Parcel" as the legal entity that is the employer. Other wage
18 statements issued by DEFENDANTS list "Martinez On Time" as the legal entity that is the
19 employer. However, documents in PLAINTIFF's personnel file indicate that "Martinez Ontime
20 Parcel, Inc." is the employer. Based on information and belief, DEFENDANTS issued wage
21 statements to Aggrieved Employees that also failed to list the correct name and address of the legal
22 entity that is the employer. As a result, the wage statements provided to PLAINTIFF and the
23 Aggrieved Employees were not accurate and did not include all of the statutorily required
24 information, including but not limited to the name and address of the legal entity that is the
25 employer.

26 50. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
27 statements to Aggrieved Employees that failed to list all applicable hourly rates in effect during the
28 pay period, due to, including but not limited to, failing to list an hourly rate/overtime rate at all

1 and/or failing to list the correct overtime rate because DEFENDANTS did not incorporate all non-
2 discretionary compensation, such as, but not limited to, non-discretionary bonuses/incentive pay
3 and/or shift differential pay and/or other non-discretionary compensation into the regular pay rate
4 for purposes of calculating the owed overtime rate.

5 51. As a result, PLAINTIFF and the Aggrieved Employees have suffered injury as they
6 could not easily determine whether they received all wages owed to them and whether they were
7 paid for all hours worked. Moreover, as a result of DEFENDANTS' failure to list the correct legal
8 entity that is the employer, PLAINTIFF and the Aggrieved Employees have suffered injury as there
9 was confusion as to which entity to contact regarding any question(s) they had about wages paid
10 and unpaid.

11 52. **Sick Leave Violations:** DEFENDANTS violated California's paid sick leave laws
12 including, Labor Code sections 245-248.5; DEFENDANTS failed to provide proper sick leave to
13 Aggrieved Employees, due to, including but not limited to, DEFENDANTS' failure to account for
14 the actual hours worked by virtue of DEFENDANTS' failure to relieve Aggrieved Employees of all
15 duties and employer control during any unpaid meal periods, mandated pre-shift/post-shift off-the-
16 clock work, payment according to scheduled hours rather than actual time worked and time-
17 rounding policies and practices, as described herein, and or DEFENDANT'S failure to incorporate
18 all forms of non-discretionary remuneration, including but not limited to, non-discretionary
19 bonuses/incentive pay and/or shift differential pay, and/or other non-discretionary compensation
20 into the sick pay calculation. DEFENDANTS further failed to put the Aggrieved Employees on
21 notice of their paid sick leave rights - or thereby putting their entitlement to sick leave in a Labor
22 Code section 2810.5 notice. DEFENDANTS failed to maintain accurate records documenting the
23 hours worked and paid sick days accrued and used by the Aggrieved Employees, in violation of
24 Labor Code section 247.5. DEFENDANTS failed to provide notice of the accrued sick leave
25 amount or balance left for the Aggrieved Employees by failing to provide Aggrieved Employees
26 with a wage statement or separate writing showing the balance of accrued or available sick leave,
27 or paid time off leave provided in lieu of sick leave, on their designated pay dates with the their
28 payment of wages, as required under Labor Code section 246, and thus affected Aggrieved

1 Employees' intelligent exercise of their paid sick leave. But for this failure, Aggrieved Employees
2 who are no longer employed with DEFENDANTS would have used their paid sick leave at least
3 prior to their respective separations, or on several occasions after receiving notice of the available
4 sick leave.

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

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

19 **55.** Additionally, DEFENDANTS failed and continue to fail to keep accurate records and
20 issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and
21 Aggrieved Employees.

22 **56. Failure to Reimburse Business Expenses.** DEFENDANTS also failed to compensate
23 PLAINTIFF and the Aggrieved Employees for business-related expenses incurred in direct
24 consequence of the discharge of their duties or of their obedience to the directions of the employer.
25 PLAINTIFF and the Aggrieved Employees were improperly required to provide and maintain work
26 tools that are supposed to be the responsibility of the employer. DEFENDANTS shifted its costs of
27 doing business onto PLAINTIFF and other Aggrieved Employees by requiring them to pay for its
28 business expenses, including but not limited to, use of PLAINTIFF's and Aggrieved Employees'

1 personal mobile phones/mobile devices and costs associated with the purchase and/or maintenance
2 of work uniforms/clothing and protective gear. For example, at times, PLAINTIFF received work-
3 related calls and messages to his personal phone from managers and/or supervisors, including but
4 not limited to, regarding scheduling/other work tasks, and purchased his own face masks.
5 PLAINTIFF was not reimbursed for these business expenses.

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

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

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

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

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

26 62. **Statutory Wage Violations.** As described above, DEFENDANTS willfully and
27 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
28 for all hours worked which resulted in the payment of less than the statutorily required wages owed

1 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
2 not limited to, overtime wages and minimum wages, to which they were entitled to under California
3 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
4 Aggrieved Employees lower wages than those they were entitled to while purporting that
5 PLAINTIFF and other Aggrieved Employees were properly paid.

6 **63. Untimely Payment of Final Wages.** DEFENDANTS failed to timely Aggrieved
7 Employees all wages that were due and owing upon termination or resignation. Labor Code sections
8 201 and 202, together require employers to pay all wages immediately upon discharge and/or within
9 72 hours of an employees' resignation. Upon separation of employment, Aggrieved Employees'
10 final paychecks were not timely provided. Based on information and belief, DEFENDANTS did not
11 pay final wages in accordance with the timing requirements set forth in Labor Code sections 201
12 and 202. Based on information and belief, DEFENDANTS provide final wages to Aggrieved
13 Employees on the regular pay day without regard to the timing requirements of Labor Code sections
14 201-202.

15 64. Moreover, upon separation of employment, Aggrieved Employees' final paychecks,
16 once provided, did not include all wages owed as they were devoid of, including but not limited to,
17 all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed paid time
18 off wages at the properly accrued rates. DEFENDANTS also willfully failed to timely pay all wages
19 upon separation of employment because it was not paying sick pay at the appropriate rates due to,
20 including but not limited to, failing to incorporate all non-discretionary compensation into the sick
21 pay calculation.

22 **65. Unlawful Agreements-Unlawful Criminal and Financial Background Checks.**
23 Based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved
24 Employees to agree in writing to unlawful conditions of employment, such as, but not limited to,
25 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
26 employment, in violation of Labor Code section 432.5. Based on further information and belief,
27 DEFENDANTS also required PLAINTIFF to agree in writing to unlawful background checks not
28 in conformity with the requirements of Investigative Consumer Reporting Agencies Act, Civil Code

1 sections 1786, et seq. (“ICRAA”) and/or the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et
2 seq. (“FCRA”), in violation of Labor Code section 432.5. Based on information and belief,
3 DEFENDANTS asked about arrests not resulting in convictions on its employment application, in
4 violation of Labor Code section 432.7 and or otherwise unlawfully asked about criminal
5 history/unlawfully required the disclosure of criminal history prior to extending a conditional offer
6 of employment and required PLAINTIFF and other Aggrieved Employees to agree in writing to the
7 unlawful disclosures as a condition of employment, in violation of Labor Code section 432.5.

8 **FIRST CAUSE OF ACTION**

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

10 **SECTIONS 2698, ET SEQ.**

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

13 66. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

27 69. Employers covered by any and all applicable IWC Wage Orders have an obligation to
28 both (1) relieve their employees for at least one meal period for shifts over five hours (see above),

1 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
2 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
3 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
4 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
5 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
6 provided”).

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

14 71. DEFENDANTS have a consistent policy and/or practice of not providing lawful meal
15 periods to PLAINTIFF and Aggrieved Employees and/or providing compensation in lieu thereof.
16 As explained above, PLAINTIFF and other Aggrieved Employees were consistently unable to take
17 timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being forced to
18 take late meal periods, interrupted meal periods and/or work through part or all their purported meal
19 periods. Moreover, DEFENDANTS failed to keep accurate records of meal period start and end
20 times.

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

25 73. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal periods
26 in violation of California law or failed to pay the proper meal period premium for failure to
27 incorporate all non-discretionary remuneration including but not limited to, non-discretionary
28 bonuses/incentive pay and/or shift differential pay and/or other non-discretionary compensation into

1 the regular rate of compensation for purposes of calculating the owed meal period premium.

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

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

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

27 77. Moreover, based on information and belief, DEFENDANTS failed to pay PLAINTIFF
28

1 and other Aggrieved Employees an additional hour of pay at PLAINTIFF's and other Aggrieved
2 Employees' respective regular rates of compensation for each missed or improper rest period.
3 DEFENDANTS either failed to may any rest period premium at all or failed to pay the proper rest
4 period premium for failure to incorporate all non-discretionary remuneration including but not
5 limited to, non-discretionary bonuses/incentive pay and/or shift differential pay and/or other non-
6 discretionary compensation into the regular rate of compensation for purposes of calculating the
7 owed rest period premium.

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

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

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

25 81. PLAINTIFF and other Aggrieved Employees were non-exempt employees who
26 regularly worked time for which they were not compensated, resulting in unpaid minimum wages
27 as well as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)
28 hours per week or more than eight (8) hours in a workday or seven (7) consecutive days in a

1 workweek. Aggrieved Employees who worked more than twelve hours in a workday or more than
2 eight (8) hours on the seventh consecutive day of work in a workweek were also denied "double
3 time" wages due to, including but not limited to, DEFENDANTS' failure to relieve Aggrieved
4 Employees of all duties and employer control during any unpaid meal periods, rounded time entries
5 and payment of wages according to scheduled hours worked rather than actual time worked and
6 other policies and practices mandating off-the-clock work as described herein.

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

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

26 84. Moreover, as explained above, based on information and belief, during the relevant
27 period, Aggrieved Employees worked subject to an alternative work week schedule in which
28 Aggrieved Employees were scheduled to work ten (10) hours per shift, four (4) shifts per week.

1 However, based on information and belief, on various diverse dates, PLAINTIFF and other
2 Aggrieved Employees were sent home between one (1) to two (2) hours before completing their
3 ten-hour shifts. On such shortened shifts, PLAINTIFF and other Aggrieved Employees were entitled
4 to overtime pay at 1.5 times their regular rate(s) of pay after the first eight (8) hours of work. Instead,
5 DEFENDANTS paid Aggrieved Employees their respective base rate(s) for all scheduled hours
6 worked on the shortened shift(s) in violation of the alternative workweek schedule and in violation
7 of California Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section
8 1198.

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

19 86. DEFENDANTS knew or had reason to know Aggrieved Employees were working
20 during unpaid meal periods, prior to clocking in/after clocking out/ otherwise working off-the-clock
21 and not being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to
22 provide PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the
23 wage statements provided by DEFENDANTS do not accurately reflect, inter alia, the correct total
24 hours worked. Due to, including but not limited to, DEFENDANTS' time-rounding and auto-
25 deduction policies and practices, payment according to scheduled hours rather than actual hours
26 worked, and other mandated off-the-clock work policies and practices described herein,
27 DEFENDANT'S wage statements fail to reflect the true total hours worked by PLAINTIFF and the
28 Aggrieved Employees worked, as required under Labor Code section 226(a). Failure to list all hours

1 worked on a wage statement, gives rise to an inference of injury under Labor Code section 226
2 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

13 89. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
14 they could not easily determine whether they received all wages owed to them and whether they
15 were paid for all hours worked.

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

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

23 **92. Sick Leave Violations.** DEFENDANTS violated California's paid sick leave
24 laws including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to
25 provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
26 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (by
27 virtue of DEFENDANTS' meal period auto-deduction and time rounding practices and off-the-

28 ¹ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

1 clock work described herein), and/or failure to incorporate all forms of non-discretionary
2 remuneration into the sick pay calculation.

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

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

13 95. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain
14 records documenting the hours worked and paid sick days accrued and used by PLAINTIFF
15 and all Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved
16 Employees were entitled to the maximum number of hours accruable.

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

22 97. These practices violated California's sick leave laws, Labor Code section 245, et
23 seq.

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

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

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

16 **101. Unreimbursed Business Expenses.** California law requires employers to
17 indemnify their employees for all necessary expenditures incurred by the employee in direct
18 consequence of the discharge of their duties or of their obedience to the directions of the
19 DEFENDANTS. See Cal. Lab. Code section 2802(a) and all applicable Wage Orders, section
20 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses'
21 shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the
22 employee enforcing the rights granted by this section." Cal. Lab. Code section 2802(c).
23 Moreover, "any contract or agreement, express or implied, made by any employee to waive the
24 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
25 employee or his personal representative of any right or remedy to which he is entitled to under
26 the laws of this State." See Cal. Lab. Code section 2804. Among other things, under California
27 law, when tools or equipment are required by the employer or are necessary to the performance
28 of a job, such tools and equipment shall be provided and maintained by employer, except that

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

12 102. At all relevant times, PLAINTIFF and other Aggrieved Employees were
13 improperly required to provide and maintain work tools that are supposed to be the
14 responsibility of the employer, including but not limited to, use of personal cell phone/data plan
15 charges and/or costs associated with having to purchase or maintain work uniforms/work
16 clothing and or protective equipment.

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

21 104. DEFENDANTS' failure to provide Aggrieved Employees with full
22 reimbursement for all reasonable expenses associated with carrying out their duties required
23 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation
24 of Labor Code section 2802 and section 9 of all applicable IWC Wage orders. Accordingly,
25 this constitutes a PAGA violation based on violations of Labor Code section 2802 and section
26 9 of the applicable wage order.

27 105. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
28

1 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
2 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
3 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
4 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
5 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and
6 unreimbursed business expenses, result in separate violations of sections 1198 and 1199, which
7 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

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

16 **107. Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
17 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
18 wages. As described above, DEFENDANTS willfully and systematically denied the Aggrieved
19 Employees minimum and overtime wage compensation for all hours worked which resulted in the
20 payment of less than statutorily required wages to them. DEFENDANTS acted with the intent to
21 deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages,
22 to which they were entitled to under California law.

23 **108. Untimely Wages at Termination.** Labor Code section 201 requires DEFENDANTS
24 to pay all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
25 Code section 202 extends those provisions to employees who resign. For all Aggrieved Employees
26 no longer employed by DEFENDANTS, DEFENDANTS have an ongoing failure to pay such
27 aggrieved employees all wages earned and unpaid at the time of discharge or resignation, due to
28 DEFENDANTS' failure to pay, inter alia, all owed minimum wages, overtime wages, premium

1 wages, vacation pay, and sick leave wages and/or all paid time off at the properly accrued rates.
2 These violations subject DEFENDANTS to civil penalties under the Labor Code, including without
3 limitation Labor Code sections 203, 210, 256 and 2699. Each violation results in a separate civil
4 penalty, for each Aggrieved Employee for each pay period during which the statutory provisions
5 were violated.

6 **109. Background Check Violations/Unlawful Agreements/Unlawful Inquiries into**
7 **Criminal History.** Labor Code section 432.5 provides that “no employer...shall require any
8 employee or applicant for employment to agree, in writing, to any term or condition which is known
9 by such employer...to be prohibited by law.” Based on information and belief, DEFENDANTS
10 required PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of
11 employment, such as, but not limited to, unlawful criminal and/or financial checks as a condition of
12 obtaining and/or continuing employment in violation of Labor Code section 432.5.

13 **110.** The California Labor Code places certain procedural and substantive limits on an
14 employer's ability to conduct employee background checks and on how employers can use the
15 information they obtain through these background checks. Upon information and belief,
16 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit or agree to submit
17 to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
18 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
19 and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in
20 writing to unlawful background checks not in conformance with the requirements of the
21 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
22 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
23 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of
24 employment, in violation of Labor Code section 432.5. Based on information and belief,
25 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to agree in writing to a
26 background check which failed to abide by the requirements set forth in CA Civil Code section
27 1786, et seq. and 15 U.S.C. section 1681, et seq., by including but not limited to, failing to provide
28 a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information

1 (including but not limited to, information that is solely relevant to applicants from different states),
2 failing to provide a lawful purpose for the background check, failing to provide a summary of rights
3 under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request
4 a copy of the report, and failing to properly obtain authorization or consent to such a background
5 check, and thus was an unlawful background check. Based on information and belief,
6 DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in writing to
7 provide ongoing consent to DEFENDANTS to conduct background checks throughout the duration
8 of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in
9 a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to
10 an unlawful provision as a condition of employment.

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

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

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

25 114. These violations subject DEFENDANTS to civil penalties under the Labor Code,
26 including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each
27 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
28 civil penalty.

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

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

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

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

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1 3. For such other and further relief that the Court deems just and proper.

2 Dated: May 16, 2022

CROSNER LEGAL, PC

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By: _____

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Michael R. Crosner, Esq.

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Zachary M. Crosner, Esq.

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Blake R. Jones, Esq.

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Attorneys for Plaintiff,

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IVAN PEREZ

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