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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**
11

12 VIJAY SHETH, on behalf of himself, the
13 State of California, and others similarly
situated and aggrieved,

14 Plaintiff,
15

16 v.

17 ICON BURGER ACQUISITION LLC, a
18 Delaware limited liability company;
SMASHBURGER ACQUISITION-SO
19 CAL LLC, a Delaware limited liability
company; SMASHBURGER
20 ACQUISITION - SAN FRANCISCO
LLC, a Delaware limited liability
21 company; SMASHBURGER
ACQUISITION - SAN DIEGO LLC, a
22 Delaware limited liability company;
SMASHBURGER ACQUISITION -
23 SACRAMENTO LLC, a Delaware limited
liability company; and DOES 1-100,
24 inclusive,

25 Defendants.
26
27
28

Case No.: **22STCV15786**

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

1 Plaintiff VIJAY SHETH ("PLAINTIFF" or "PLAINTIFF SHETH"), 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 ICON BURGER ACQUISITION LLC, a Delaware limited
4 liability company; SMASHBURGER ACQUISITION-SO CAL LLC, a Delaware limited liability
5 company; SMASHBURGER ACQUISITION - SAN FRANCISCO LLC, a Delaware limited
6 liability company; SMASHBURGER ACQUISITION - SAN DIEGO LLC, a Delaware limited
7 liability company; SMASHBURGER ACQUISITION - SACRAMENTO LLC, a Delaware limited
8 liability company; and DOES 1-100, inclusive, (collectively referred to herein as
9 "DEFENDANTS"). PLAINTIFF is informed and believes, and on the basis of that information and
10 belief, alleges as follows:

11 **INTRODUCTION**

12 1. This is a representative action filed by PLAINTIFF on behalf of himself, other similarly
13 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California's
14 Private Attorney General Act, Labor Code section 2698 et. seq. ("PAGA"), to recover civil penalties
15 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
16 Employees) for DEFENDANTS' violations of the California Labor Code as alleged below.

17 **JURISDICTION AND VENUE**

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

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

27 **THE PARTIES**

28 4. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF

1 worked for DEFENDANTS in the State of California as a non-exempt, hourly-paid employee at
2 DEFENDANTS' Smashburger fast-food restaurants located in California, during the relevant
3 period. PLAINTIFF worked at multiple Smashburger restaurant/facilities owned and operated by
4 DEFENDANTS in California, including but not limited to, DEFENDANTS' restaurants/facilities in
5 Carson, Manhattan Beach, Redondo Beach, and San Diego, but primarily worked at the Redondo
6 Beach and Carson restaurants/facilities.

7 5. DEFENDANTS are each a Delaware limited liability company that at all relevant times,
8 were authorized to do business within the State of California and are doing business within the State
9 of California. DEFENDANTS and their managing agents own, operate, or otherwise manage
10 Smashburger fast-food restaurants in California, which, based on information and belief, include,
11 but are not limited to, Smashburger restaurants/facilities in Carson, Manhattan Beach, Redondo
12 Beach, San Diego, San Jose, Sacramento, and San Francisco.

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

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

1 **JOINT LIABILITY**

2 8. Under California law, the definition of the term "to employ" is broadly construed under
3 the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise
4 control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3) to engage,
5 thereby creating a common law employment relationship. See *Martinez v. Combs*, 49 Cal.4th 35, 64
6 (2010). One reason that the IWC defined "employer" in terms of exercising control was to reach
7 situations in which multiple entities control different aspects of the employment relationship.
8 Supervision of the work, in the specific sense of exercising control over how services are properly
9 performed, is properly viewed as one of the "working conditions" mentioned in the wage order. *Id.*
10 at 76. A joint employer relationship exists when one entity hires and pays a worker, and the other
11 entity supervises the work. *Id.*

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

19 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
21 human resources as set forth herein. For example, DEFENDANTS, and each of them, maintain the
22 same headquarters/principal office in Denver, Colorado (3900 E. Mexico Ave, Suite 1100, Denver,
23 CO 80210), have the same California registered corporate Agent for Service of Process and/or the
24 same Director of Legal Administration (Linda McLellan). Based on information and belief,
25 DEFENDANTS utilize the same policies and procedures for all California employees, including
26 issuing the same employee handbooks and other form agreements. Based on information and belief,
27 DEFENDANTS also use at least some of the same Human Resources personnel and attorneys to
28 oversee employment matters. As a result, DEFENDANTS utilized the same unlawful wage and

1 hour policies and practices across all their California locations/facilities and subjected all the
2 Aggrieved Employees to these same policies and practices regardless of the location(s) or facilities
3 where they worked in California.

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

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

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

3 **PAGA ALLEGATIONS**

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

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

10 14. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
11 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
12 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
13 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
14 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
15 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
16 Employees, as he was jointly employed by DEFENDANTS and is thereby affected by one or more
17 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
18 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
19 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

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

21 15. On March 4, 2022, PLAINTIFF SHETH, through his counsel, gave written
22 notice by online filing with the California Labor and Workforce Development Agency ("LWDA")
23 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
24 allegations alleged in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's
25 claims for violations of the California Labor Code and the applicable wage orders on behalf of
26 himself, the State of California and other Aggrieved Employees. The LWDA assigned PLAINTIFF
27 the following case number: LWDA-CM-871624-22 . PLAINTIFF, through his counsel, also sent
28 the PAGA Notice to DEFENDANTS via certified mail, on March 4, 2022.

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

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

9 **FACTUAL ALLEGATIONS**

10 18. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were employed
11 by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised control over
12 PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them to work.
13 PLAINTIFF and the Aggrieved Employees worked in various job positions, including but not
14 limited to, as cashiers, cooks, kitchen prep workers, servers, managers, supervisors, and/or
15 restaurant staff and/or similar titles.

16 19. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during the
17 PAGA Period and was subject to one or more of the Labor Code violations alleged herein.
18 PLAINTIFF began his employment with DEFENDANTS, on or about January 24, 2019, as a cook
19 and/or other similar title, and was thereafter promoted to a shift manager and/or other similar title,
20 in or about March of 2020. PLAINTIFF worked primarily at DEFENDANTS' Smashburger
21 restaurants/facilities located in Redondo Beach and Carson.

22 20. PLAINTIFF typically worked shifts of at least eight (8) hours per day, five (5) days
23 per week.

24 21. **Denied Meal Periods.** During the relevant period, PLAINTIFF and the Aggrieved
25 Employees regularly worked shifts of five and one half (5 ½) hours or more and were entitled to at
26 least one thirty-minute, uninterrupted, off-duty meal break per shift. However, DEFENDANTS
27 failed to provide PLAINTIFF and the Aggrieved Employees with timely thirty-minute,
28 uninterrupted meal breaks and/or required PLAINTIFF and the Aggrieved Employees to work

1 through purported meal breaks, remain on DEFENDANTS' premises during purported meal periods
2 and/or remain tethered to DEFENDANTS' communication devices. Based on information and
3 belief, PLAINTIFF and other Aggrieved Employees were not adequately informed, authorized,
4 instructed about, nor permitted an opportunity to take lawful meal breaks per California law.

5 22. PLAINTIFF and other Aggrieved Employees were consistently unable to take timely,
6 thirty-minute, off-duty, uninterrupted meal periods due to the nature and constraints of their job
7 duties, lack of coverage/relief workers available and/or commentary from supervisors pressuring
8 them to take non-compliant breaks or skip breaks completely. For example, PLAINTIFF estimates
9 his meal periods were interrupted, cut short or skipped completely approximately four out of every
10 five shifts he worked due to lack of coverage/relief workers available. PLAINTIFF and other
11 Aggrieved Employees were directed by DEFENDANTS to clock out for meal periods but to
12 continue working. For example, PLAINTIFF's supervisor instructed PLAINTIFF not to leave the
13 cooks, cashiers, or servers working alone/unattended in the restaurant. Due to this, PLAINTIFF
14 was rarely ever able to take a timely, uninterrupted, thirty-minute meal break but was instructed by
15 his supervisor to always clock out for a full thirty minutes per shift before the end of the fifth hour
16 of work. On occasions PLAINTIFF did not clock himself out, PLAINTIFF's supervisor would clock
17 PLAINTIFF out and/or edit the time records so that it would appear as though PLAINTIFF had
18 taken a compliant meal period when PLAINTIFF had not. Based on information and belief,
19 DEFENDANTS applied these same policies and practices of time shaving/time-record manipulation
20 and automatic deductions for missed, interrupted, and/or on-duty meal periods to the other
21 Aggrieved Employees that it applied to PLAINTIFF.

22 23. DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF
23 and other Aggrieved Employees of all duties and DEFENDANTS' control during unpaid meal
24 breaks. Based on information and belief, DEFENDANTS had a uniform policy and practice of
25 requiring PLAINTIFF and other Aggrieved Employees to remain tethered to their worksite and/or
26 work communication devices during meal periods.

27 24. Based on information and belief, DEFENDANTS implemented a policy and/or
28

1 practice of automatically deducting/requiring PLAINTIFF and other Aggrieved Employees to clock
2 out for at least thirty minutes per shift for these missed or noncompliant meal periods, despite having
3 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
4 receive compliant meal periods.

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

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

12 27. Moreover, DEFENDANTS failed to provide a second meal break to PLAINTIFF
13 and Aggrieved Employees that worked shifts of more than ten hours. DEFENDANTS failed to
14 provide PLAINTIFF and Aggrieved Employees with a second, duty-free, uninterrupted, thirty-
15 minute meal period even though PLAINTIFF and Aggrieved Employees worked more than ten
16 hours in a workday and thus were entitled to a second duty-free, uninterrupted, thirty-minute meal
17 period before the end of the tenth hour of work. For example, PLAINTIFF often worked shifts
18 lasting over ten hours, but was only provided with one meal period, if any, and that single meal
19 period was noncompliant.

20 28. Furthermore, based on information and belief, DEFENDANTS failed to pay
21 PLAINTIFF and other Aggrieved Employees an additional hour of wages at their respective regular
22 rates of pay for each workday a compliant meal period was denied. DEFENDANTS either failed
23 to pay Aggrieved Employees a meal period premium at all for each workday a compliant meal
24 period was denied or failed to pay the legally required meal period premium for failure to incorporate
25 all non-discretionary compensation, including but not limited to, non-discretionary
26 bonuses/incentive pay into the regular pay rate used to calculate the owed meal period premium.

27 29. **Denied Rest Periods.** DEFENDANTS did not authorize or permit PLAINTIFF and
28

1 other Aggrieved Employees to take legally compliant rest periods at a rate of every four (4) hours
2 worked or major fraction thereof. PLAINTIFF and other Aggrieved Employees were not adequately
3 informed, authorized, instructed about, nor permitted an opportunity to take legally compliant rest
4 breaks.

5 30. PLAINTIFF and other Aggrieved Employees were consistently unable to take a net, ten-
6 minute, off-duty rest period for every four (4) hours worked or major fraction thereof because of the
7 nature and constraints of their job duties and/or commentary from supervisors pressuring them to
8 take non-compliant rest breaks or skip rest breaks completely. PLAINTIFF and other Aggrieved
9 Employees were instructed by their supervisors to work through their rest periods due to lack of
10 coverage/lack of relief workers available and/or understaffing. PLAINTIFF and other Aggrieved
11 Employees were pressured to complete their work duties according to a designated schedule such
12 that rest breaks were only taken once jobs were completed/if time permitted. For example,
13 PLAINTIFF was consistently required to cut any rest breaks short or skip them completely when
14 the restaurant was busy or simply due to understaffing/lack of relief workers available. When
15 PLAINTIFF complained about denied breaks as a cook, PLAINTIFF's supervisor told PLAINTIFF
16 that PLAINTIFF could not take his breaks because there was no one to cover the kitchen. When
17 PLAINTIFF worked as a non-exempt manager, PLAINTIFF's supervisor told PLAINTIFF he was
18 not entitled to take rest breaks because "managers do not take 10s [i.e. ten-minute uninterrupted rest
19 breaks]," or words to that effect.

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

22 32. Based on information and belief, DEFENDANTS implemented policies and
23 practices that failed to relieve the Aggrieved Employees of all duties and employer control during
24 any rest periods. For example, based on information and belief, DEFENDANTS required
25 PLAINTIFF and other Aggrieved Employees to remain on the restaurant premises during any rest
26 periods. As such, PLAINTIFF and other Aggrieved Employees remained under DEFENDANTS'
27 control during any rest periods, rendering said rest periods on duty and therefore noncompliant with
28 California rest period law. Despite not providing PLAINTIFF and other Aggrieved Employees with

1 all owed legally compliant rest periods, DEFENDANTS did not pay PLAINTIFF and other
2 Aggrieved Employees an additional hour of wages at their respective regular rates of pay for any
3 missed/non-compliant rest period.

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

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

19 **35.** DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and other
20 Aggrieved Employees violated and continues to violate the applicable Wage Order, and Labor Code
21 section 1198.

22 **36. Unpaid Minimum Wages and Overtime Wages.** DEFENDANTS failed to
23 compensate all hours worked resulting in the underpayment of minimum and overtime wages owed
24 to PLAINTIFF and other Aggrieved Employees. As described above, PLAINTIFF and other
25 Aggrieved Employees were regularly required to perform off-the-clock work by virtue of
26 DEFENDANTS' automatic-deduction policy for meal periods. Based on information and belief, the
27 work time reported by Aggrieved Employees was rounded and automatically deducted for at least
28 thirty minutes of wages every day they worked for DEFENDANTS for meal breaks not taken,

1 interrupted, or during which the Aggrieved Employees were not relieved of all duties and employer
2 control. Per DEFENDANTS' uniform policies and practices, PLAINTIFF and other Aggrieved
3 Employees were required to clock out for at least thirty minutes per shift for purported meal periods,
4 despite DEFENDANTS' actual and/or constructive knowledge that PLAINTIFF and other
5 Aggrieved Employees were working through part or all these meal periods.

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

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

15 39. Based on information and belief, DEFENDANTS had and continue to have a policy and
16 practice of paying Aggrieved Employees according to scheduled hours rather than actual time
17 worked due to DEFENDANTS' mandated off-the-clock work policies and practices. For example,
18 prior to clocking in for their shifts each day, PLAINTIFF and other Aggrieved Employees were
19 required to undergo a COVID-related temperature check, but this time spent under employer control
20 undergoing DEFENDANTS' mandated COVID-temperature screening was not recorded and not
21 compensated, resulting in unpaid minimum and overtime wages to PLAINTIFF and other
22 Aggrieved Employees.

23 40. DEFENDANTS also did not compensate PLAINTIFF and other Aggrieved Employees
24 for time spent donning and doffing personal protective equipment and/or uniforms during meal
25 periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.
26 For example, upon arriving to work, PLAINTIFF and other Aggrieved Employees were required to
27 walk to the back of the restaurant to retrieve a company-provided apron and hat. After changing
28 into the required uniform, PLAINTIFF and other Aggrieved Employees clocked in. When working

1 as a cook, PLAINTIFF was also required to wash his hands and don gloves prior to clocking in for
2 the start of his shift each day. Similarly, PLAINTIFF and other Aggrieved Employees were required
3 to remove their company-provided uniform after clocking out. Such time spent donning and doffing
4 was not recorded and not compensated, resulting in unpaid minimum and overtime wages to
5 PLAINTIFF and other Aggrieved Employees.

6 41. DEFENDANTS also did not compensate PLAINTIFF and other Aggrieved Employees
7 for pre-shift and post-shift off-the-clock work when opening or closing the restaurants. For
8 example, when PLAINTIFF opened the restaurant, he was required to first unlock the door and
9 disable the alarm before clocking in to work, resulting in at least several minutes of off-the-clock
10 work each shift he opened. When closing the restaurant, PLAINTIFF was required to first clock out,
11 then perform required closing duties such as, but not limited to, “grinding the system,” i.e.,
12 electronically submit that day’s restaurant/facility data to corporate and only after performing such
13 closing duties would PLAINTIFF then enable the alarm and then close the doors. This resulted in
14 at least an additional twenty minutes of post-shift off-the-clock work each time PLAINTIFF closed
15 the restaurant.

16 42. Based on information and belief, DEFENDANTS failed to compensate PLAINTIFF
17 and other Aggrieved Employees for time they were required to spend completing training,
18 orientation, certification and/or the onboarding process. For example, based on information and
19 belief, DEFENDANTS required PLAINTIFF and other Aggrieved Employees to perform online
20 training through DEFENDANTS’ online training platform, “Smashconnect,” review and sign
21 various types of policies and documents, including but not limited to, safety guidelines/safety
22 awareness certifications, acknowledgment(s) of receipt of employee handbook, confidentiality
23 agreement, among other documents, but they were not paid for all time spent reviewing and/or
24 completing certification as directed by DEFENDANTS. Based on information and belief,
25 DEFENDANTS had a uniform policy and practice of requiring Aggrieved Employees to complete
26 mandatory off-the-clock administrative tasks, onboarding, training, certification, and/or other tasks
27 without compensating for all hours worked.

28 43. Based on further information and belief, DEFENDANTS required/requires

1 PLAINTIFF and other Aggrieved Employees to undergo Covid testing outside of their scheduled
2 shift times without compensating PLAINTIFF and other Aggrieved Employees for the travel time
3 to/from the testing sites, time spent waiting for the tests to be performed and/or time spent
4 undergoing testing/fulfilling DEFENDANTS' testing requirements, resulting in significant off-the-
5 clock work and unpaid minimum and overtime wages.

6 44. Based on information and belief, DEFENDANTS engaged in systemic time-record
7 manipulation to shave time worked off PLAINTIFF and other Aggrieved Employees' workdays,
8 by, for example, manually editing electronic time records to delete portions of total hours worked
9 or otherwise understate actual hours worked by PLAINTIFF and other Aggrieved Employees. For
10 example, PLAINTIFF reports he consistently worked an average of sixty hours per week, but
11 DEFENDANTS would only compensate PLAINTIFF for up to his scheduled forty hours per week.
12 When PLAINTIFF reported the underpayment of wages to management, he was told "not to worry
13 about it," or words to that effect, and that he would later be "reimbursed" for the uncompensated
14 worktime, which did not occur.

15 45. Further, as described above, DEFENDANTS had a uniform policy and/or practice of
16 failing to relieve PLAINTIFF and other Aggrieved Employees of all duties and employer control
17 during unpaid meal breaks, which resulted in PLAINTIFF and other Aggrieved Employees not
18 being compensated for all hours worked.

19 46. DEFENDANTS' automatic deduction and time rounding/time shaving policies and
20 practices described herein resulted in a failure to account for all hours worked and deprived
21 PLAINTIFF and Aggrieved Employees of all owed minimum and overtime wages for those that
22 worked more than eight (8) hours in a day or more than forty (40) hours in a week.

23 47. Based on information and belief, DEFENDANTS also failed to pay the correct overtime
24 rate to Aggrieved Employees due to DEFENDANTS' failure to incorporate all forms of non-
25 discretionary compensation, including but not limited to, non-discretionary bonus/incentive pay,
26 into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the
27 underpayment of overtime wages owed. For example, DEFENDANTS compensated PLAINTIFF
28 with non-discretionary performance-based bonuses/incentive pay for training employees to meet

1 shift-leader requirements and or for meeting kitchen-time quotas in pay periods during which
2 PLAINTIFF worked overtime, yet DEFENDANTS failed to include the non-discretionary incentive
3 pay in the regular pay rate used to calculate the owed overtime rate. Failing to include non-
4 discretionary compensation in the regular pay rate resulted in a miscalculation of the overtime wage
5 rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and other Aggrieved
6 Employees.

7 48. 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 49. 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 50. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
18 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
19 with Labor Code section 226. DEFENDANTS provided wage statements that failed to indicate the
20 total wages earned (including meal and rest period premiums), and total hours worked by
21 PLAINTIFF and other Aggrieved Employees (by virtue of the automatic deduction for meal periods
22 and other off-the-clock work described herein). Accordingly, DEFENDANTS violated Labor Code
23 section 226 by providing wage statements that were inaccurate and failed to include all of the
24 statutorily required information.

25 51. Moreover, based on information and belief, DEFENDANTS violated Labor Code
26 section 226(a)(8) because the wage statements issued by DEFENDANTS failed to list the correct
27 name and address of the legal entity that is the employer on wage statements provided by
28 DEFENDANTS.

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

7 **53. Sick Leave Violations:** DEFENDANTS violated California's paid sick leave laws
8 including, Labor Code sections 245-248.5; DEFENDANTS failed to provide proper sick leave to
9 Aggrieved Employees, due to, including but not limited to, DEFENDANTS' failure to account for
10 the actual hours worked by virtue of DEFENDANTS' failure to relieve Aggrieved Employees of all
11 duties and employer control during any unpaid meal periods, mandated pre-shift/post-shift off-the-
12 clock work, payment according to scheduled hours rather than actual time worked and time-
13 rounding policies and practices, as described herein, and or DEFENDANT'S failure to incorporate
14 all forms of non-discretionary remuneration, including but not limited to, non-discretionary
15 bonuses/incentive pay and/or other non-discretionary compensation into the sick pay calculation.
16 DEFENDANTS further failed to put the Aggrieved Employees on notice of their paid sick leave
17 rights - or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice.
18 DEFENDANTS failed to maintain accurate records documenting the hours worked and paid sick
19 days accrued and used by the Aggrieved Employees, in violation of Labor Code section 247.5.
20 DEFENDANTS failed to provide notice of the accrued sick leave amount or balance left for the
21 Aggrieved Employees by failing to provide Aggrieved Employees with a wage statement or separate
22 writing showing the balance of accrued or available sick leave, or paid time off leave provided in
23 lieu of sick leave, on their designated pay dates with the their payment of wages, as required under
24 Labor Code section 246, and thus affected Aggrieved Employees' intelligent exercise of their paid
25 sick leave. But for this failure, Aggrieved Employees who are no longer employed with
26 DEFENDANTS would have used their paid sick leave at least prior to their respective separations,
27 or on several occasions after receiving notice of the available sick leave.

28 **54. Recordkeeping Violations.** Due to the unlawful policies and practices described

1 herein, DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records
2 as required by Labor Code section 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
3 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
4 required by law, including but not limited to the following records: total daily hours worked,
5 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
6 began and ended each work period, time records of meal periods, and accurate itemized wage
7 statements.

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

14 56. Additionally, DEFENDANTS failed and continue to fail to keep accurate records and
15 issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and
16 Aggrieved Employees.

17 **57. Failure to Reimburse Business Expenses.** DEFENDANTS also failed to compensate
18 PLAINTIFF and the Aggrieved Employees for business-related expenses incurred in direct
19 consequence of the discharge of their duties or of their obedience to the directions of the employer.
20 PLAINTIFF and the Aggrieved Employees were improperly required to provide and maintain work
21 tools that are supposed to be the responsibility of the employer. DEFENDANTS shifted its costs of
22 doing business onto PLAINTIFF and other Aggrieved Employees by requiring them to pay for its
23 business expenses, including but not limited to, use of PLAINTIFF's and Aggrieved Employees'
24 mobile phones, personal computer devices, data plan usage and charges, and costs associated with
25 the maintenance and/or purchase of uniforms/ work clothing and shoes, and/or protective masks.
26 For example, PLAINTIFF received calls and text messages on his personal phone for work-related
27 purposes, including but not limited to, messages related to scheduling and assigning shifts. Based
28 on information and belief, PLAINTIFF and other Aggrieved Employees also used personal devices,

1 including, personal computers, to conduct work-related activities, such as, but not limited to, to
2 complete off-the-clock trainings as mandated by DEFENDANTS. Based on information and belief,
3 PLAINTIFF and other Aggrieved Employees were not compensated in any way for these business
4 expenses.

5 58. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
6 required to use their personal vehicles as a direct consequence of the performance of their job duties.
7 For example, at times, PLAINTIFF and other Aggrieved Employees were required to use their
8 personal vehicles to deliver catering orders to customers at the direction of management, without
9 being reimbursed for vehicle-related expenses incurred (e.g., gas, mileage, vehicle wear and tear).

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

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

17 61. **Failure to Provide Suitable Seating.** Per section 14(A-B) of all applicable IWC
18 Wage Orders, employees shall be provided with suitable seats when the nature of the work
19 reasonably permits the use of seats and when they are not actively engaged in the work duties that
20 would not permit them to be seated.

21 62. DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees with
22 suitable seating and when such employees were not engaged in duties which required them to stand,
23 no seating was placed in reasonable proximity to their workstations.

24 63. Moreover, the nature of the work reasonably permitted the use of seats for at least
25 part of the time that PLAINTIFF and other Aggrieved Employees were working. Lastly, there were
26 periods of time when PLAINTIFF and other Aggrieved Employees were not engaged in active
27 duties of their employment, yet there were no suitable seats in reasonable proximity to the work area
28 and use of seats would not interfere with the performance of their duties.

1 64. PLAINTIFF and the other Aggrieved Employees worked in various positions. The
2 nature of their work reasonably permitted the use of seats. However, DEFENDANTS failed to
3 provide suitable seating in reasonable proximity to PLAINTIFF and the other Aggrieved Employees'
4 work areas in violation of the applicable Wage Order and in violation of Labor Code section 1198
5 and 1199.

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

11 66. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
12 recordkeeping provisions, minimum wages and overtime wages, suitable seating, suitable resting
13 facilities violations, and unreimbursed business expenses result in separate violations of sections
14 1198 and 1199.

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

20 **68. Statutory Wage Violations.** As described above, DEFENDANTS willfully and
21 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
22 for all hours worked which resulted in the payment of less than the statutorily required wages owed
23 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
24 not limited to, overtime wages and minimum wages, to which they were entitled to under California
25 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
26 Aggrieved Employees lower wages than those they were entitled to while purporting that
27 PLAINTIFF and other Aggrieved Employees were properly paid.

28 **69. Violation of Labor Code sections 351 and 352.** Based on information and belief,

1 DEFENDANTS failed to ensure that Aggrieved Employees fully received the gratuities left for them
2 by patrons, in that DEFENDANTS and their agents would collect and/or take a portion of the
3 gratuities for themselves, in violation of Labor Code Section 351. Based on further information and
4 belief, DEFENDANTS also failed/fails to keep accurate records of all tips received, in violation of
5 Labor Code Section 353.

6 **70. 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.

13 **71.** Moreover, upon separation of employment, Aggrieved Employees' final paychecks,
14 once provided, did not include all wages owed as they were devoid of, including but not limited to,
15 all owed minimum wages, all owed overtime wages, and all owed premium wages for unlawful
16 meal and rest breaks, and/or all owed vacation pay. DEFENDANTS also willfully failed to timely
17 pay all wages upon separation of employment because it was not paying sick pay at the appropriate
18 rates due to, including but not limited to, failing to incorporate all non-discretionary compensation
19 into sick pay calculation.

20 **72. Unlawful Agreements-Unlawful Criminal and Financial Background Checks.**
21 Based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved
22 Employees to agree in writing to unlawful conditions of employment, such as, but not limited to,
23 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
24 employment, in violation of Labor Code section 432.5. Based on further information and belief,
25 DEFENDANTS also required PLAINTIFF to agree in writing to unlawful background checks not
26 in conformity with the requirements of Investigative Consumer Reporting Agencies Act, Civil Code
27 sections 1786, et seq. ("ICRAA") and/or the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et
28 seq. ("FCRA"), in violation of Labor Code section 432.5. Based on information and belief,

1 DEFENDANTS asked about arrests not resulting in convictions on its employment application, in
2 violation of Labor Code section 432.7 and or otherwise unlawfully asked about criminal
3 history/unlawfully required the disclosure of criminal history prior to extending a conditional offer
4 of employment and required PLAINTIFF and other Aggrieved Employees to agree in writing to the
5 unlawful disclosures as a condition of employment, in violation of Labor Code section 432.5.

6 **FIRST CAUSE OF ACTION**

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

8 **SECTIONS 2698, ET SEQ.**

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

11 73. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

25 76. Employers covered by any and all applicable IWC Wage Orders have an obligation to
26 both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
27 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
28 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)

1 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
2 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
3 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
4 provided”).

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

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

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

23 80. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal periods
24 in violation of California law or failed to pay the proper meal period premium for failure to
25 incorporate all non-discretionary remuneration including but not limited to, non-discretionary
26 bonuses/incentive pay and/or other non-discretionary compensation into the regular rate of
27 compensation for purposes of calculating the owed meal period premium.

28 81. These unlawful meal period policies and practices result in violations of Labor Code

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

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

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

24 84. Moreover, based on information and belief, DEFENDANTS failed to pay PLAINTIFF
25 and other Aggrieved Employees an additional hour of pay at PLAINTIFF's and other Aggrieved
26 Employees' respective regular rates of compensation for each missed or improper rest period.
27 DEFENDANTS either failed to pay any rest period premium at all or failed to pay the proper rest
28 period premium for failure to incorporate all non-discretionary remuneration including but not

1 limited to, non-discretionary bonuses/incentive pay and/or other non-discretionary compensation
2 into the regular rate of compensation for purposes of calculating the owed rest period premium.

3 85. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and all
4 applicable IWC Wage Orders, section 12. These violations subject DEFENDANTS to civil penalties
5 under Labor Code sections 558 and 2699, and all applicable Wage Orders, section 20.

6 86. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
7 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
8 applicable Wage Order provides: "Suitable resting facilities shall be provided in an area separate
9 from the toilet rooms and shall be available to employees during work hours."

10 87. As explained above, DEFENDANTS did not provide PLAINTIFF and other Aggrieved
11 Employees with suitable resting facilities during their hours of work, particularly during meal and/or
12 rest periods. As such, DEFENDANTS violated and continue to violate the applicable Wage Order,
13 including but not limited to, IWC Wage Order 5-2001, section 13(B) and the California Labor Code,
14 including but not limited to section 1198.

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

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

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

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

22 92. Based on information and belief, DEFENDANTS further violated California's overtime
23 wage laws by, including but not limited to, failing to incorporate all non-discretionary
24 compensation, including but not limited to, non-discretionary bonus compensation/incentive pay
25 and or shift differential pay and/or other non-discretionary compensation into the regular pay rate
26 used to calculate the overtime rate of pay. Failing to include all non-discretionary compensation into
27 the regular pay rate used to calculate the owed overtime rate resulted in a miscalculation of the
28

1 overtime wage rate, resulting in the underpayment of overtime (and “double time”) wages owed to
2 Aggrieved Employees.

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

13 **94.** DEFENDANTS knew or had reason to know Aggrieved Employees were working
14 during unpaid meal periods, prior to clocking in/after clocking out/ otherwise working off-the-clock
15 and not being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to
16 provide PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the
17 wage statements provided by DEFENDANTS do not accurately reflect, inter alia, the correct total
18 hours worked. Due to, including but not limited to, DEFENDANT'S time-rounding and auto-
19 deduction policies and practices, payment according to scheduled hours rather than actual hours
20 worked, and other mandated off-the-clock work policies and practices described herein,
21 DEFENDANT'S wage statements fail to reflect the true total hours worked by PLAINTIFF and the
22 Aggrieved Employees worked, as required under Labor Code section 226(a). Failure to list all hours
23 worked on a wage statement, gives rise to an inference of injury under Labor Code section 226
24 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

25 **95.** DEFENDANTS’ failure to accurately list all hours worked on all wage statements
26 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
27 Employees over whether they received all wages owed to them.

28 **96.** As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as

1 they could not easily determine whether they received all wages owed to them and whether they
2 were paid for all hours worked.

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

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

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

17 100. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved
18 Employees notice of their paid sick leave rights - or thereby putting their entitlement to sick
19 leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain
20 accurate records of used sick leave and the balance of paid sick leave left to the employees,
21 which affected PLAINTIFF and Aggrieved Employees' intelligent exercise of their paid sick
22 leave.

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

27 102. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain

28

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

1 records documenting the hours worked and paid sick days accrued and used by PLAINTIFF
2 and all Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved
3 Employees were entitled to the maximum number of hours accruable.

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

9 104. These practices violated California's sick leave laws, Labor Code section 245, et
10 seq.

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

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

16 107. **Record Keeping Violations.** California Labor Code sections 226 and 1174
17 require DEFENDANTS to keep "accurate and complete" payroll records showing, among other
18 things, the hours worked daily by all non-exempt employees. Section 7 of all applicable IWC
19 Wage Orders similarly requires employer to keep time records showing, inter alia, when the
20 employees begin and end each work period and reflecting the true start and end times during
21 which all owed meal periods are provided each day. At all relevant times, DEFENDANTS have
22 failed, and continue to fail, to keep the required time records, as DEFENDANTS have failed to
23 record the true start and end times of PLAINTIFF's and other Aggrieved Employees' workdays
24 and failed to record PLAINTIFF's and other Aggrieved Employees' meal periods.
25 DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and
26 the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all
27 applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under
28 the Labor Code, including without limitation sections 1174.5 and 2699. Each violation of each

1 Labor Code section and Wage Order provision, for each aggrieved employee, results in a
2 separate civil penalty.

3 108. **Unreimbursed Business Expenses.** California law requires employers to
4 indemnify their employees for all necessary expenditures incurred by the employee in direct
5 consequence of the discharge of their duties or of their obedience to the directions of the
6 DEFENDANTS. See Cal. Lab. Code section 2802(a) and all applicable Wage Orders, section
7 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses'
8 shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the
9 employee enforcing the rights granted by this section." Cal. Lab. Code section 2802(c).
10 Moreover, "any contract or agreement, express or implied, made by any employee to waive the
11 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
12 employee or his personal representative of any right or remedy to which he is entitled to under
13 the laws of this State." See Cal. Lab. Code section 2804. Among other things, under California
14 law, when tools or equipment are required by the employer or are necessary to the performance
15 of a job, such tools and equipment shall be provided and maintained by employer, except that
16 an employee whose wages are at least two (2) times the minimum wage provided herein may
17 be required to provide and maintain hand tools and equipment customarily required by the trade
18 or craft. See applicable IWC Wage Order, section 9 (b). Among other things, under California
19 law, when employees must use their personal cellphones for work-related purposes, the
20 employer must reimburse them for a reasonable percentage of their cell phone bills. See
21 *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show
22 liability, an employee will only need to show that he or she was required to use their personal
23 cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California
24 law also requires employer to reimburse employees for automobile expenses incurred for the
25 business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle.
26 See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

27 109. At all relevant times, PLAINTIFF and other Aggrieved Employees were
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1 improperly required to provide and maintain work tools that are supposed to be the
2 responsibility of the employer, including but not limited to, use of personal cell phone/data plan
3 charges, use of personal computer, costs associated with having to purchase or maintain work
4 uniforms/work clothing and or protective equipment and or costs associated with being required
5 to use their personal vehicles in the discharge of their job duties.

6 110. DEFENDANTS' failure to provide Aggrieved Employees with full
7 reimbursement for all reasonable expenses associated with carrying out their duties required
8 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation
9 of Labor Code section 2802 and section 9 of all applicable IWC Wage orders. Accordingly,
10 this constitutes a PAGA violation based on violations of Labor Code section 2802 and section
11 9 of the applicable wage order.

12 111. **Seating Violations.** California law provides that employees shall be provided
13 with suitable seats when the nature of the work reasonably permits the use of seats and when
14 they are not engaged in the active work duties that would not permit them to be seated.

15 112. IWC Wage Order 5-2001 (and all applicable IWC Wage Orders), Section 14(A-
16 B) provides:

17 (A) All working employees shall be provided with suitable seats when the nature
18 of the work reasonably permits the use of seats.

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

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

28 114. As alleged herein, the nature of PLAINTIFF's and other Aggrieved Employees'

1 work reasonably permitted the use of seats, but no such seats were provided. Moreover, there
2 were periods of time when PLAINTIFF and other Aggrieved Employees were not engaged in
3 active duties of their employment, yet there were no suitable seats in reasonable proximity to
4 the work area even when the use of seats would not interfere with the performance of their
5 duties.

6 115. As such, DEFENDANTS violated and continue to violate Wage Order 5-2001
7 (and all applicable IWC Wage Orders) section 14(A)-(B) and Labor Code sections 1198 and
8 1199 by failing to provide suitable seats to PLAINTIFF and Aggrieved Employees, subjecting
9 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699.

10 116. **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,
16 unreimbursed business expenses, suitable seating and suitable resting facilities, result in separate
17 violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor
18 Code sections 1197.1 and 2699.

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

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

7 **119. Violation of Labor Code Sections 351-353.** Labor Code Section 351 prohibits
8 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
9 one or more employees by a patron. Furthermore, it is illegal for employers to make wage
10 deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's
11 wages. Labor Code Section 353 mandates employers keep accurate records of all gratuities
12 received.

13 **120.** Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
14 Employees received all gratuities left for them by patrons, in that DEFENDANTS and would collect
15 and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based
16 on further information and belief, DEFENDANTS also failed and continue to fail to keep accurate
17 records of all tips left for Aggrieved Employees, in violation of Labor Code Section 353.

18 **121. Untimely Wages at Termination.** Labor Code section 201 requires DEFENDANTS
19 to pay all wages earned and unpaid at the time of discharge, immediately upon discharge, and Labor
20 Code section 202 extends those provisions to employees who resign. For all Aggrieved Employees
21 no longer employed by DEFENDANTS, DEFENDANTS have an ongoing failure to pay such
22 aggrieved employees all wages earned and unpaid at the time of discharge or resignation, due to
23 DEFENDANTS' failure to pay, inter alia, all owed minimum wages, overtime wages, premium
24 wages, vacation pay, and sick leave wages and/or all paid time off at the properly accrued rates.
25 These violations subject DEFENDANTS to civil penalties under the Labor Code, including without
26 limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate civil penalty,
27 for each Aggrieved Employee for each pay period during which the statutory provisions were
28 violated.

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

8 123. The California Labor Code places certain procedural and substantive limits on an
9 employer's ability to conduct employee background checks and on how employers can use the
10 information they obtain through these background checks. Upon information and belief,
11 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit or agree to submit
12 to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
13 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
14 and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in
15 writing to unlawful background checks not in conformance with the requirements of the
16 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
17 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
18 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of
19 employment, in violation of Labor Code section 432.5. Based on information and belief,
20 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to agree in writing to a
21 background check which failed to abide by the requirements set forth in CA Civil Code section
22 1786, et seq. and 15 U.S.C. section 1681, et seq., by including but not limited to, failing to provide
23 a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information
24 (including but not limited to, information that is solely relevant to applicants from different states),
25 failing to provide a lawful purpose for the background check, failing to provide a summary of rights
26 under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request
27 a copy of the report, and failing to properly obtain authorization or consent to such a background
28 check, and thus was an unlawful background check. Based on information and belief,

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

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

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

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

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

24 128. Under the provisions of PAGA and the above-mentioned Labor Code sections,
25 including but not limited to, Labor Code sections 201, 202, 203, 210, 216, 223, 225.5, 226, 226.3,
26 226.7, 245-248.5, 256, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5,
27 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
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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.

129. 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
3. For such other and further relief that the Court deems just and proper.

Dated: May 11, 2022

CROSNER LEGAL, PC

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