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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF RIVERSIDE**

13 FRANCISCO CERVANTES, as an
14 individual and on behalf of all others
15 similarly situated,

16 Plaintiff,

17 v.

18 ALPHA MATERIALS, INC., a California
19 corporation; and DOES 1-100, inclusive,

20 Defendants.
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Case No.: CVRI2201967

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Compensate for Non-Productive Time**
6. **Failure to Furnish Accurate Itemized Wage Statements**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition and**
9. **Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff, FRANCISCO CERVANTES (“PLAINTIFF”), as an individual on behalf of
2 himself, the State of California, and on behalf of all others similarly situated and aggrieved, hereby
3 files this First Amended Complaint against Defendant ALPHA MATERIALS, INC., a California
4 corporation; and DOES 1-100, inclusive (collectively referred to herein as “DEFENDANTS”).
5 PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Riverside, California, pursuant to California Code of Civil Procedure section
9 395.5 because DEFENDANTS transact business within this judicial district, DEFENDANTS
10 employed PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct
11 alleged by PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral*
12 *Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in
13 any county where the defendants committed Labor Code violations against some of its employees).

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California who worked as a full-time non-exempt employee
17 for DEFENDANTS in the State of California.

18 3. DEFENDANT ALPHA MATERIALS, INC. is a California corporation that at all
19 relevant times, was authorized to do business within the State of California and is doing business
20 within the State of California. DEFENDANTS and their managing agents own, operate, or
21 otherwise manage a construction material supply company specializing in ready-mix concrete,
22 shotcrete, among other construction materials.

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

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

JOINT LIABILITY

6. Under California law, the definition of the term “to employ” is broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3) to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment relationship. Supervision of the work, in the specific sense of exercising control over how services are properly performed, is properly viewed as one of the “working conditions” mentioned in the wage order. *Id.* at 76. A joint employer relationship exists when one entity hires and pays a worker, and the other entity supervises the work. *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in California, applying a less stringent standard to what constitutes sufficient control by a business over its vendor’s employees’ wages and working conditions to render that business liable as a joint employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative joint employer instead exercises enough control over the intermediary entity to indirectly dictate the wages, hours, or working conditions of the employee, that is a sufficient showing of joint employment,” *Id.* at 875 [emphasis added].

7. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF and the Class

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

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

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

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

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

CLASS ALLEGATIONS

11. PLAINTIFF brings this action on behalf of PLAINTIFF and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to represent are defined as follows and referred to as the “Class Members”: “All current and former non-exempt employees that worked directly or via a staffing agency for DEFENDANTS in California at any time within the four years and 178 days prior to the filing of the initial Complaint.”¹

a. **Numerosity.** While the exact number of Class Members is unknown to PLAINTIFF at this time, the class is so numerous that the individual joinder of all members is impractical under the circumstances of this case.

b. **Common Questions of Law and Fact.** This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether DEFENDANTS understated hours worked and failed to

¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby “statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.”

1 pay all amounts due to PLAINTIFF and the Class Members for wages earned,
2 including minimum wages and overtime wages under California law, as a result
3 of DEFENDANTS' automatic deduction and rounding policies, mandated off-
4 the-clock work, payment of wages based on scheduled hours instead of actual
5 hours worked, and unlawful meal period policies and practices; (2) whether
6 DEFENDANTS failed to pay all overtime wages due to Class Members for
7 failure to incorporate all non-discretionary compensation into the regular pay
8 rate(s) used to calculate the owed overtime rate(s); (3) whether DEFENDANTS
9 timely paid all wages owed upon separation of employment; (4) whether
10 DEFENDANTS provided PLAINTIFF and the Class Members with all meal
11 periods or premium payments in lieu thereof in compliance with California law;
12 (5) whether DEFENDANTS provided PLAINTIFF and the Class Members with
13 all rest periods or premium payments in lieu thereof, in compliance with
14 California law; (6) whether DEFENDANTS compensated piece-rate paid Class
15 Members for all rest periods and/or other non-productive time in compliance
16 with California law; (7) whether DEFENDANTS provided PLAINTIFF and the
17 Class Members with accurate, itemized wage statements in compliance with
18 California law, displaying, including but not limited to, all hours worked, all
19 applicable hourly rates in effect, and the correct name and address of the legal
20 entity that is the employer; (8) whether DEFENDANTS failed to reimburse
21 PLAINTIFF and the Class Members for all business expenses; and (9) whether
22 DEFENDANTS violated California Business and Professions Code sections
23 17200, *et seq.*

24 c. **Ascertainable Class.** The proposed class is ascertainable as its members can
25 be identified and located using information in DEFENDANTS' business,
26 payroll and personnel record.

27 d. **Typicality.** PLAINTIFF's claims are typical of the claims of the Class
28 Members. PLAINTIFF suffered a similar injury as the other Class Members as

1 a result of DEFENDANTS' common practices regarding, *inter-alia*, failure to
2 calculate and timely pay all owed minimum and overtime wages, failure to
3 provide proper meal and rest periods or premium compensation in lieu thereof,
4 failure to compensate for all non-productive time, failure to provide accurate
5 wage statements, and failure to reimburse business expenses.

6 e. **Adequacy.** PLAINTIFF will fairly and adequately protect the interests of the
7 Class Members. PLAINTIFF has no interests adverse to the interests of the other
8 Class Members. Counsel who represent PLAINTIFF are competent and
9 experienced in litigating similar class action cases and are California lawyers in
10 good standing. Counsel for PLAINTIFF have the experience and resources to
11 vigorously prosecute this case.

12 f. **Superiority.** A class action is superior to other available means for the fair and
13 efficient adjudication of this controversy since individual joinder of all members
14 of the class is impractical. Class action treatment will permit a large number of
15 similarly situated persons to prosecute their common claims in a single forum
16 simultaneously, efficiently, and without the unnecessary duplication of effort
17 and expense that numerous individual actions would engender. Furthermore, as
18 the damages suffered by each individual member of the class may be relatively
19 small, the expenses and burden of individual litigation would make it difficult
20 or impossible for individual members of the class to redress the wrongs done to
21 them, while an important public interest will be served by addressing the matter
22 as a class action. The cost to the court system of adjudication of such
23 individualized litigation would be substantial. Individualized litigation would
24 also present the potential for inconsistent or contradictory judgments. Finally,
25 the alternative of filing a claim with the California Labor Commissioner is not
26 superior, given the lack of discovery in such proceedings, the fact that there are
27 fewer available remedies, and the losing party has the right to a trial de novo in
28 the Superior Court.

1 **FACTUAL AND LEGAL ALLEGATIONS**

2 12. During the four-year and 178-day period preceding filing of the initial complaint,
3 PLAINTIFF, and each of the Class Members, were employed by DEFENDANTS in the State of
4 California as non-exempt employees. During the PAGA Period (defined below), PLAINTIFF and
5 the Aggrieved Employees were employed by DEFENDANTS in the State of California as non-
6 exempt employees. At all times referenced herein, DEFENDANTS exercised control over
7 PLAINTIFF and each of the Class Members and each of the Aggrieved Employees and suffered
8 and/or permitted them to work.

9 13. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during
10 the relevant period. PLAINTIFF worked for DEFENDANTS as a non-exempt employee from in or
11 around 2014 through on or about May 14, 2021, when PLAINTIFF went out on medical leave.
12 PLAINTIFF worked for DEFENDANTS during the relevant period as a Material Driver and/or
13 similar title(s). PLAINTIFF's job duties included, but were not limited to, delivering dirt and cement
14 to various construction sites in the counties of Riverside and San Bernardino.

15 14. PLAINTIFF regularly worked at least ten (10) to thirteen (13) hours per day, at least
16 (5) days per week.

17 15. **Meal Periods.** During the relevant period, PLAINTIFF, the Class Members and
18 Aggrieved Employees regularly worked shifts of five and one half (5 ½) hours or more and were
19 entitled to at least one thirty-minute uninterrupted meal break. However, DEFENDANTS failed to
20 provide PLAINTIFF, Class Members and Aggrieved Employees with timely, thirty-minute,
21 uninterrupted meal breaks and/or required PLAINTIFF and Class Members and Aggrieved
22 Employees to work through purported meal breaks, remain on DEFENDANTS' premises/in close
23 proximity to their assigned vehicles during purported meal periods and/or remain tethered to
24 DEFENDANTS' communication devices. Based on information and belief, PLAINTIFF and other
25 Class Members and Aggrieved Employees were not adequately informed, authorized, instructed
26 about, nor permitted an opportunity to take lawful meal breaks per California law.

27 16. PLAINTIFF and Class Members and Aggrieved Employees were consistently unable
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1 to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late
2 meal periods, interrupted meal periods and/or work through part or all their meal periods due to the
3 nature and constraints of their job duties, need to keep up with delivery schedules/complete work
4 tasks on time, lack of relief workers available, requirement to stay on the premises/close to their
5 vehicles, and/or commentary from supervisors pressuring them to take non-compliant meal breaks
6 and/or skip meal breaks completely. For example, PLAINTIFF estimates he was forced to take a
7 late, short/interrupted meal period and/or work through his meal period completely at least seven
8 times per month due to the need to keep up with his delivery schedule/complete jobs on time,
9 understaffing, and/or pressure from management to work through his breaks. On information and
10 belief, other Class Members and other Aggrieved Employees were also unable to take timely thirty-
11 minute meal periods due to the nature of their job, their workload, pressure from management to
12 take noncompliant breaks and/or lack of relief workers.

13 17. Based on information and belief, PLAINTIFF, Class Members and Aggrieved
14 Employees were required to remain on DEFENDANTS' premises/in close proximity to their
15 assigned vehicles and/or were tethered to DEFENDANTS' communication devices during
16 purportedly off-duty meal periods, and thus remained subjected to DEFENDANTS' control during
17 meal periods.

18 18. Based on information and belief, DEFENDANTS implemented a policy and/or
19 practice of automatically deducting at least thirty minutes per shift for short, interrupted and/or
20 otherwise unlawful meal periods, despite having actual and/or constructive knowledge that
21 PLAINTIFF and other Class Members and Aggrieved Employees did not receive compliant meal
22 periods.

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

27 20. PLAINTIFF is further informed and believes and thereon alleges that
28 DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-

1 deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF
2 and other Class Members and Aggrieved Employees, in violation of California's meal period laws.

3 21. Moreover, DEFENDANTS failed to provide a second meal period to PLAINTIFF
4 and Class Members that worked shifts of more than ten hours. DEFENDANTS failed to provide
5 PLAINTIFF, Class Members and Aggrieved Employees with a second uninterrupted meal period
6 despite PLAINTIFF and Class Members and Aggrieved Employees consistently working over ten
7 hours in a workday and thus being entitled to a second duty-free, uninterrupted, thirty-minute meal
8 period before the end of the tenth hour of work. Per DEFENDANTS' unlawful meal period policies
9 and practices, DEFENDANTS only provided a single meal period per shift during shifts lasting
10 longer than ten hours and that single meal period was usually non-compliant. For example,
11 PLAINTIFF regularly worked more than ten or twelve hours per shift but was not provided with a
12 single compliant meal period during his shift. Notably, DEFENDANTS' wage statements for
13 PLAINTIFF do not reflect the payment of a single meal period premium even though PLAINTIFF
14 was consistently required to work through his owed meal breaks.

15 22. Based on information and belief, DEFENDANTS did not have a lawful written meal
16 break policy, nor did DEFENDANTS have a compliant policy in practice.

17 23. Moreover, DEFENDANTS failed to pay PLAINTIFF and other Class Members and
18 Aggrieved Employees an additional hour of wages at their respective regular rates of pay for each
19 workday a proper meal period was not provided, as required by California law. Based on information
20 and belief, DEFENDANTS failed to pay a meal period premium at all for each workday a lawful
21 meal period was not provided. If and when a meal premium was paid, DEFENDANTS failed to
22 pay the proper premium for failure to incorporate all non-discretionary remuneration, including but
23 not limited to, non-discretionary bonus pay (e.g., safety bonuses), piece rate compensation, shift
24 differential pay, and/or other non-discretionary compensation into the regular rate for purposes of
25 calculating the owed meal period premium at the correct regular rate of compensation.

26 24. For example, PLAINTIFF was compensated with non-discretionary bonuses, e.g.,
27 non-discretionary safety bonuses, and/or shift differential pay and/or other non-discretionary pay
28 during pay periods in which he was denied a meal period. Based on information and belief,

1 DEFENDANTS either failed to pay PLAINTIFF a meal period premium at all for each day a meal
2 period was denied and/or DEFENDANTS underpaid the premium for failure to factor PLAINTIFF's
3 non-discretionary compensation into his regular rate of pay for purposes of calculating the owed
4 meal period premium. Based on information and belief, to the extent DEFENDANTS paid any meal
5 period premiums at all, DEFENDANTS failed to incorporate all non-discretionary compensation
6 into the regular rate of pay for purposes of paying the owed meal period premiums to Class Members
7 and Aggrieved Employees.

8 25. **Rest periods.** DEFENDANTS did not properly authorize and provide PLAINTIFF
9 and other Class Members and Aggrieved Employees with off-duty, uninterrupted, net ten-minute
10 rest periods for every four (4) hours worked or major fraction thereof.

11 26. PLAINTIFF, Class Members and Aggrieved Employees were not adequately
12 informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per
13 California law.

14 27. Due to understaffing/lack of relief workers, pressure from supervisors to work
15 through breaks, and/or the nature and constraints of PLAINTIFF's job duties, including but not
16 limited to, unreasonably demanding delivery schedules imposed on PLAINTIFF by
17 DEFENDANTS, PLAINTIFF was rarely afforded the opportunity to take a compliant rest period.
18 PLAINTIFF was under constant pressure to work through his rest periods so that he could keep up
19 with his delivery schedule and/or attend to other work tasks. Based on information and belief, other
20 Class Members and other Aggrieved Employees were similarly suffered and/or permitted to work
21 through their rest periods due to lack of relief workers, their workloads and/or pressure from
22 management to meet deadlines and/or complete other work tasks. As such, any purported rest
23 periods were typically interrupted or cut short. PLAINTIFF and other Class Members and Aggrieved
24 Employees were required to complete their work duties according to a schedule designated by
25 DEFENDANTS that prohibited the taking of compliant rest breaks.

26 28. Moreover, based on information and belief, PLAINTIFF and other Class Members
27 and Aggrieved Employees were required to remain on the worksite premises and/or in close
28 proximity to their assigned vehicles and/or remained tethered to DEFENDANTS' communication

1 devices during purported rest periods and were thus subjected to DEFENDANTS' control. As such,
2 DEFENDANTS failed to provide Class Members with ten-minute, uninterrupted, off-duty rest
3 periods as required under California law.

4 29. Based on information and belief, DEFENDANTS did not have a lawful policy,
5 instruction, or practice as to the taking, timing, or duty-free nature of rest periods. For example,
6 based on information and belief, DEFENDANTS implemented an unlawful policy and practice of
7 prohibiting more than two rest periods per shift regardless of the number of hours worked and any
8 purportedly provided rest periods were typically noncompliant. For example, oftentimes,
9 PLAINTIFF worked shifts lasting more than ten hours but was only allowed to take two rest periods
10 during those shifts lasting more than ten hours and any purported rest periods were usually
11 noncompliant.

12 30. Additionally, based on information and belief, to the extent DEFENDANTS
13 permitted the taking of any rest periods, DEFENDANTS failed to authorize and permit rest periods
14 that were a "net" ten minutes and instead limited Class Members and Aggrieved Employees to only
15 ten-minute rest periods, requiring them to be back at their workstations/vehicles within ten minutes
16 of leaving, in violation of California rest period law.

17 31. Despite not providing lawful rest periods, DEFENDANTS failed to pay PLAINTIFF
18 and other Class Members and Aggrieved Employees with an additional hour of pay at their regular
19 rates of compensation for each missed, or otherwise unlawful rest period. Based on information and
20 belief, DEFENDANTS failed to pay a rest period premium at all for each workday a lawful rest
21 period was not provided. If and when a rest premium was paid, DEFENDANTS failed to pay the
22 proper premium for failure to incorporate all non-discretionary remuneration, including but not
23 limited to, non-discretionary bonus/incentive pay, piece-rate compensation, shift differential pay,
24 and/or other non-discretionary compensation into the regular rate for purposes of calculating the
25 owed rest period premium at the correct regular rate of compensation.

26 32. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate all
27 hours worked, including all owed minimum wages and overtime wages, including double time
28 wages. As explained above, PLAINTIFF and the Class Members and Aggrieved Employees were

1 regularly required to perform off-the-clock work by virtue of DEFENDANTS' automatic-deduction
2 policy for meal periods. On information and belief, the work time reported by PLAINTIFF and the
3 Class Members and Aggrieved Employees was rounded and automatically deducted for at least 30
4 minutes of wages every day they worked for DEFENDANTS for meal periods that were short, not
5 taken, interrupted, or during which PLAINTIFF and the Class Members and Aggrieved Employees
6 were not relieved of all duties or employer control and/or were otherwise unlawful.

7 33. Moreover, PLAINTIFF alleges on information and belief that DEFENDANTS
8 implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other
9 Class Members and Aggrieved Employees of compensable time because the time-rounding system
10 implemented by DEFENDANTS would almost always, if not always, result in understating actual
11 compensable work time. On information and belief, the work time reported by PLAINTIFF and
12 Class Members and Aggrieved Employees was rounded/shaved to at least the nearest quarter hour,
13 resulting in DEFENDANTS failing to compensate PLAINTIFF and other Class Members and
14 Aggrieved Employees for all hours worked and the underpayment of wages owed to PLAINTIFF
15 and other Class Members and Aggrieved Employees. For example, for various pay periods
16 throughout the relevant period, PLAINTIFF's wage statements show that DEFENDANTS rounded
17 his total hours worked to at least the nearest quarter hour, resulting in the underpayment of minimum
18 and overtime wages owed to PLAINTIFF. Based on information and belief, DEFENDANTS also
19 rounded other Class Members' and other Aggrieved Employees' hours worked resulting in the
20 underpayment of wages owed to Class Members and Aggrieved Employees. DEFENDANTS'
21 failure to pay for all time worked by virtue of its time-rounding practices and/or paying for scheduled
22 hours rather than actual time work resulted in the underpayment of minimum wages owed to
23 PLAINTIFF, Class Members and Aggrieved Employees, as well as unpaid overtime wages for those
24 Class Members and Aggrieved Employees who worked more than eight (8) hours in a day and/or
25 forty hours in a week.

26 34. Moreover, PLAINTIFF, Class Members and Aggrieved Employees were required to
27 perform off-the-clock work. For example, based on information and belief, DEFENDANTS did not
28 compensate PLAINTIFF and other Class Members and Aggrieved Employees for time spent

1 donning and doffing personal protective equipment, uniforms and/or safety equipment (e.g.,
2 protective hard hats, reflective gear, and/or face masks DEFENDANTS required) during meal
3 periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.
4 Based on information and belief, Class Members and Aggrieved Employees were not compensated
5 for additional off-the-clock work tasks, such as, but not limited to, all time spent performing pre-
6 trip and post-trip vehicle and/or equipment inspections, which resulted in the underpayment of
7 minimum wages and overtime wages owed to Class Members and Aggrieved Employees as well as
8 record-keeping violations.

9 35. Based on information and belief, DEFENDANTS had a uniform policy and practice
10 of prohibiting Class Members and Aggrieved Employees from clocking in prior to their scheduled
11 shift start times while requiring that they consistently perform pre-shift off-the-clock work that was
12 neither recorded nor compensated. Based on information and belief, PLAINTIFF and other Class
13 Members and Aggrieved Employees were required to complete other off-the-clock work tasks after
14 clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in
15 significant off-the-clock work and the underpayment of minimum and overtime wages owed to
16 PLAINTIFF, Class Members and Aggrieved Employees.

17 36. Based on information and belief, DEFENDANTS failed to compensate Class
18 Members and Aggrieved Employees for time they were required to spend completing training and
19 certification and/or the onboarding process. For example, based on information and belief,
20 DEFENDANTS required Class Members and Aggrieved Employees to review and sign various
21 types of policies and documents, including but not limited to, safety guidelines/safety awareness
22 certifications, employee time-keeping policies, among other documents, but they were not paid for
23 all time spent reviewing and/or completing certification as directed by DEFENDANTS. Based on
24 information and belief, DEFENDANTS had a uniform policy and practice of requiring Class
25 Members and Aggrieved Employees to complete mandatory off-the-clock administrative tasks,
26 onboarding, training, certification, and/or other tasks without compensating for all hours worked.

27 37. Additionally, based on information and belief, at times, DEFENDANTS instituted a
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1 piece-rate-based compensation scheme that resulted in pay periods during which Class Members
2 and Aggrieved Employees were denied the minimum wage for all hours worked. Based on
3 information and belief, DEFENDANTS paid Class Members and Aggrieved Employees on a piece-
4 rate basis (e.g., per load/per delivery), at least during some pay periods, during the relevant time
5 period. However, based on information and belief, DEFENDANTS failed to separately compensate
6 Class Members and Aggrieved Employees for all non-piece rate related activities/all non-productive
7 time, including but not limited to, all rest breaks and/or pre-trip and post-trip inspections, waiting
8 time, fueling, cleaning, setting up, time spent completing paperwork, loading, unloading, waiting
9 between jobs and tasks, and/or performing work duties that otherwise fall outside of the piece-rate
10 pay criteria. DEFENDANTS' failure to separately compensate Class Members and Aggrieved
11 Employees for their rest periods and/or other non-productive time and/or failure to compensate them
12 at the correct rates for all non-productive time including rest periods resulted in the failure to pay
13 Class Members and Aggrieved Employees for all hours worked and violations of California wage
14 and hour laws, including but not limited to, Labor Code sections 226.2 and/or 1197. Based on
15 information and belief, DEFENDANTS further failed to include the information on these
16 employees' wage statements required by Labor Code section 226.2.

17 38. Based on further information and belief, DEFENDANTS also failed to pay the
18 correct overtime and double time rates to PLAINTIFF and Class Members and Aggrieved
19 Employees due to, including but not limited to, DEFENDANTS' failure to incorporate all forms of
20 non-discretionary compensation, including but not limited to, non-discretionary bonuses/incentive
21 pay (e.g., safety bonuses), shift differential pay, piece-rate pay and/or other non-discretionary pay,
22 into the regular rate(s) of pay for purposes of calculating the owed overtime rate and the owed double
23 time rate resulting in the underpayment of overtime and double time wages owed. For example,
24 based on information and belief, DEFENDANTS compensated Class Members and Aggrieved
25 Employees with non-discretionary bonuses/incentive pay, shift differential pay, piece-rate pay
26 and/or other non-discretionary pay, however, DEFENDANTS failed to incorporate all non-
27 discretionary compensation into the regular rate used to calculate the overtime rate, resulting in the
28 underpayment of overtime wages owed to Class Members and Aggrieved Employees.

1 39. Based on information and belief, DEFENDANTS failed to pay twice Class
2 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
3 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
4 violation of California overtime laws.

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

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

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

21 43. Separately, based on information and belief, DEFENDANTS violated Labor Code
22 section 226 because the wage statements issued by DEFENDANTS failed to list the correct name
23 and address of the legal entity that is the employer. As a result, the wage statements provided to
24 PLAINTIFF and the Class Members and Aggrieved Employees were not accurate and did not
25 include all of the statutorily required information, including but not limited to the name and address
26 of the legal entity that is the employer.

27 44. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
28

1 statements to Class Members that failed to list all applicable hourly rates in effect during the pay
2 period, due to, including but not limited to, failing to list an hourly rate/overtime rate at all and/or
3 failing to list the correct overtime rate because DEFENDANTS did not incorporate all non-
4 discretionary compensation, such as, but not limited to, shift differential pay, piece rate
5 compensation and/or non-discretionary bonuses/incentive pay into the regular pay rate for purposes
6 of calculating the owed overtime rate.

7 45. Based on information and belief, DEFENDANTS violated Labor Code section
8 226(a)(3) by failing to list the number of piece-rate units earned and any applicable piece rate(s) for
9 Class Members who were paid on a piece-rate basis. Based on further information and belief,
10 DEFENDANTS issued wage statements to Class Members compensated on a piece rate and/or
11 commission basis that failed to include all information required under Labor Code section 226.2.

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

18 47. **Failure to Reimburse Business Expenses.** DEFENDANTS also failed to
19 compensate PLAINTIFF and the Class Members and Aggrieved Employees for business-related
20 expenses incurred in direct consequence of the discharge of their duties or of their obedience to the
21 directions of the employer. PLAINTIFF and the Class Members and Aggrieved Employees were
22 improperly required to provide and maintain work tools that are supposed to be the responsibility of
23 the employer. DEFENDANTS shifted its costs of doing business onto PLAINTIFF and other Class
24 Members and Aggrieved Employees by requiring them to pay for its business expenses, including
25 but not limited to, use of PLAINTIFF's and Class Members' personal mobile phone/mobile device
26 and costs associated with the purchase and/or maintenance of work uniforms/clothing and personal
27 protective equipment and/or safety gear. For example, at times, PLAINTIFF received work-related
28 calls and messages to his personal phone from managers and/or supervisors, including but not

1 limited to, regarding scheduling/other work tasks, and purchased his own protective face masks and
2 hard hats DEFENDANTS required. At times, DEFENDANTS provided PLAINTIFF with a
3 company phone, but the company phone consistently malfunctioned such that PLAINTIFF was
4 required to use his personal cell phone/mobile device to perform his job duties, including but not
5 limited to, to communicate with dispatch and/or for navigation purposes. PLAINTIFF was not
6 reimbursed for these business expenses. DEFENDANTS' failure to provide PLAINTIFF and other
7 Class Members and Aggrieved Employees with full reimbursement for all reasonable expenses
8 associated with carrying out their duties required that PLAINTIFF and other Class Members and
9 Aggrieved Employees subsidize and/or carry the burden of business expenses in violation of Labor
10 Code section 2802.

11 48. **Untimely Payment of Final Wages.** DEFENDANTS failed to timely pay Class
12 Members and Aggrieved Employees all wages that were due and owing upon termination or
13 resignation. Labor Code sections 201 and 202, together require employers to pay all wages
14 immediately upon discharge and/or within 72 hours of an employees' resignation. Upon separation
15 of employment, Class Members' and Aggrieved Employees' final paychecks were not timely
16 provided. Based on information and belief, DEFENDANTS did not pay final wages in accordance
17 with the timing requirements set forth in Labor Code sections 201 and 202.

18 49. Moreover, upon separation of employment, Class Members' and Aggrieved
19 Employees' final paychecks, once provided, did not include all wages owed as they were devoid of,
20 including but not limited to, all owed minimum wages, all owed overtime wages, all owed double
21 time wages, and all owed premium wages for unlawful meal and rest breaks, and/or all owed
22 vacation pay and/or all paid time off wages at the properly accrued wages.

23 50. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
24 engaged in these same herein described unlawful practices with regard to all of the Class Members
25 and Aggrieved Employees, and that DEFENDANTS applied these same herein described unlawful
26 practices to all of its employees that it applied to PLAINTIFF.

1 **FIRST CAUSE OF ACTION**

2 **Recovery of Unpaid Minimum Wages and Liquidated Damages**

3 **(Against All Defendants)**

4 51. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
5 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
6 to 40 hours per week or 8 hours per day, at a regular time rate no less than the mandated minimum
7 wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a
8 payroll period is unlawful.

9 52. DEFENDANTS violated California’s minimum wage laws by failing to compensate
10 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
11 DEFENDANTS’ time-rounding policy and practice, auto-deduction policy and practice for meal
12 periods, paying for scheduled hours instead of actual hours worked, and off the-clock work
13 described above.

14 53. DEFENDANTS had and continue to have a continuous policy of failing to pay
15 PLAINTIFF and Class Members for all hours worked.

16 54. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
17 Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon,
18 plus attorney's fees and costs, in an amount to be proved at trial.

19 55. Class Members that are no longer employed by DEFENDANTS have an additional
20 claim for waiting time penalties pursuant to Labor Code sections 201-203 for up to 30 days of
21 waiting time penalties on account of DEFENDANTS’ ongoing willful failure to pay them all
22 minimum wages that are due and owing, together with interest thereon, attorneys’ fees and costs.

23 **SECOND CAUSE OF ACTION**

24 **Recovery of Unpaid Overtime**

25 **(Against All Defendants)**

26 56. Pursuant to Labor Code section 510 and the applicable Wage Order, employees in
27 California must be paid overtime, equal to one and one-half times the employee's regular rate of pay
28 for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and

1 for the first eight (8) hours worked on the seventh consecutive day of work in a workweek.
2 Employees must be paid double the regular rate of pay for all hours worked in excess of 12 hours
3 in any workday and for all hours worked in excess of eight (8) on the seventh consecutive day of
4 work in a workweek, unless they are exempt.

5 57. PLAINTIFF and the Class Members worked overtime hours for which they were not
6 compensated by DEFENDANTS by virtue of DEFENDANTS' auto-deduction and time-
7 rounding/time-shaving policies and other mandated off-the-clock work policies and practices
8 described above.

9 58. Based on further information and belief, DEFENDANTS also failed to pay the
10 correct overtime rates to Class Members due to DEFENDANTS' failure to incorporate all forms of
11 non-discretionary compensation, including but not limited to, shift differential pay and/or non-
12 discretionary bonus pay and/or piece-rate pay and/or other forms of non-discretionary pay, into the
13 regular rate of pay for purposes of calculating the owed overtime rates resulting in the underpayment
14 of overtime wages owed.

15 59. DEFENDANTS' automatic deduction and rounding policies and practices as well as
16 mandated off-the-clock work described herein resulted in a failure to account for all hours worked
17 and deprived Class Members of all owed minimum wages and overtime wages, including, but not
18 limited to, double time wages.

19 60. DEFENDANTS' conduct described above is in violation of California Labor Code
20 sections 510, 1194, 1198, and all applicable Wage Orders.

21 61. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
22 wages, plus attorney's fees and costs, in an amount to be proved.

23 62. Class Members that are no longer employed by DEFENDANTS have an additional
24 claim for waiting time penalties pursuant to Labor Code sections 201-203 for up to 30 days of
25 waiting time penalties on account of DEFENDANTS' ongoing willful failure to pay them all
26 overtime and double time wages that are due and owing, together with interest thereon, attorneys'
27 fees and costs.
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1 **THIRD CAUSE OF ACTION**

2 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

3 **(Against All Defendants)**

4 63. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

5 64. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
6 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
7 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
8 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
9 waived, but only under the following circumstances: (1) if an employee's total work period in a day
10 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
11 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
12 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
13 waived by mutual consent of the employer and employee, but only if the first meal period was not
14 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
15 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
16 done so. If the employer fails to properly record a valid meal period, it is presumed no meal period
17 was provided.

18 65. PLAINTIFF and the Class Members were regularly unable to take timely, off duty,
19 thirty-minute, uninterrupted meal periods in compliance with California law. PLAINTIFF and the
20 Class Members were consistently either unable to take a timely meal period and/or were interrupted
21 during a meal period due to the nature and constraints of their job duties and/or lack of relief
22 workers. Moreover, PLAINTIFF and the Class Members were restricted to DEFENDANTS'
23 premises/their assigned vehicles and/or remained tethered to DEFENDANTS' communication
24 devices during purported meal periods, depriving PLAINTIFF and Class Members of lawful meal
25 periods.

26 66. Based on information and belief, DEFENDANTS had and continue to have a policy
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1 of clocking out PLAINTIFF and Class Members for 30 minutes for meal periods not taken and/or
2 interrupted and/or otherwise not relieved of all duties and employer control during said meal periods,
3 rendering the unpaid time compensable under California law.

4 67. Based on information and belief, DEFENDANTS had actual and/or constructive
5 knowledge that PLAINTIFF and the Class Members did not receive compliant meal periods. Based
6 on further information and belief, DEFENDANTS rounded the start and end times of employee
7 meal periods resulting in PLAINTIFF and the Class Members receiving late or shortened meal
8 periods. PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had
9 actual or constructive knowledge that its time-rounding and auto-deduction policies and practices
10 resulted in the denial of meal periods to PLAINTIFF, in violation of California's meal period laws.

11 68. Moreover, DEFENDANTS failed to pay PLAINTIFF and the Class Members an
12 additional hour of wages at their regular rate(s) of compensation for each workday a proper meal
13 period was not provided. Additionally, when a meal premium was paid, DEFENDANTS failed to
14 include all non-discretionary compensation into the regular rate of compensation for purposes of
15 determining the owed meal premium.

16 69. Moreover, PLAINTIFF and the Class Members did not receive a timely,
17 uninterrupted second meal period when working shifts over ten (10) and/or twelve (12) hours.

18 70. DEFENDANTS failed to provide PLAINTIFF and the Class Members with all
19 required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code
20 section 226.7, PLAINTIFF and the Class Members are entitled to one additional hour's pay at the
21 employee's regular rate of compensation for each day a meal period was missed, late or interrupted,
22 all in an amount to be proved at trial.

23 **FOURTH CAUSE OF ACTION**

24 **(Failure to Provide Rest Periods or Compensation in Lieu Thereof**

25 **(Against All Defendants)**

26 71. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 72. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
28

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

13 73. PLAINTIFF and other Class Members did not receive compliant, timely net 10-
14 minute rest periods every four (4) hours worked or major fraction thereof. Any purported rest
15 periods would be interrupted, cut short, and/or late due to understaffing/lack of relief workers and/or
16 the nature and constraints of their job duties. Moreover, any purported rest periods were subject to
17 DEFENDANTS’ control due to DEFENDANTS’ requirement that PLAINTIFF and Class Members
18 remain on DEFENDANTS’ premises/in close proximity to their assigned vehicles and/or tethered
19 to DEFENDANTS’ communication devices during purported rest periods. Based on information
20 and belief, PLAINTIFF and the Class Members were pressured to work through rest periods due to
21 understaffing/lack of relief workers, their workloads and/or the nature and constraints of their job
22 duties, including but not limited to, having to meet unreasonable work deadlines imposed on them
23 by DEFENDANTS such that rest periods were only taken once tasks were completed/if time
24 permitted. Based on information and belief, DEFENDANTS did not have a lawful policy,
25 instruction, or practice as to the taking, length, timing, or duty-free nature of rest periods.

26 74. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
27 period premium to PLAINTIFF and other Class Members for each workday in which there was a
28 missed or otherwise unlawful rest period. Based on further information and belief, if a rest premium

1 was paid, DEFENDANTS failed to include all non-discretionary compensation into the regular rate
2 of compensation for purposes of determining the owed rest premium.

3 75. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
4 hour of additional pay at the regular rate of compensation for each workday that a required rest
5 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
6 Order, plus pre-judgment interest.

7 **FIFTH CAUSE OF ACTION**

8 **Failure to Compensate for Non-Productive Time**

9 **(Against All Defendants)**

10 76. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

11 77. Labor Code section 226.2 requires an employer to pay employees compensated on a
12 piece-rate basis separately for rest and recovery periods and other nonproductive time, apart from
13 any piece-rate pay. This statute further requires an employer to include on the wage statements for
14 these employees the total hours of compensable rest and recovery period, the total hours for other
15 non-productive time, the rates of compensation for these hours, and the gross wages paid for these
16 hours. In addition, the statute requires that employees shall be compensated for rest and recovery
17 periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined
18 by dividing the total compensation for the workweek, exclusive of compensation for rest and
19 recovery periods and any premium compensation for overtime, by the total hours worked during the
20 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage.
21 California courts have held that this statute also applies to employees paid on a commissioned basis.

22 78. During the Class Period, DEFENDANTS failed to comply with Labor Code section
23 226.2. Specifically, DEFENDANTS failed to pay PLAINTIFF and other Class Members who were
24 paid on a piece rate/commission basis separately for their rest periods and/or other nonproductive
25 time and/or failed to pay them for this time at the correct rates. DEFENDANTS further failed to
26 include the information on PLAINTIFF and the Class Members' wage statements required by this
27 statute.

28 79. As a direct and proximate result of DEFENDANTS' violation of Labor Code Section

226.2 as alleged herein, PLAINTIFF and the Class Members have sustained damages, including but not limited to, loss of earnings for hours worked, prejudgment interest, and costs and attorneys' fees, pursuant to the statute and other applicable law. The violations described herein also subject DEFENDANTS to penalties under Labor Code section 226.3.

SIXTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

(Against All Defendants)

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

81. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

82. During the relevant time period, DEFENDANTS intentionally failed to provide PLAINTIFF and the Class Members with complete and accurate wage statements in compliance with Labor Code section 226, because they do not accurately reflect the total number of hours worked.

83. Notably, due to DEFENDANTS' unlawful policies of automatically deducting meal periods, rounding time entries, payment according to scheduled work hours rather than actual hours worked, and uncompensated off-the-clock work, wage statements provided by DEFENDANTS fail

1 to reflect the true total hours PLAINTIFF and the Class Members worked, a requirement of Labor
2 Code section 226.

3 84. Moreover, as DEFENDANTS failed to provide lawful meal and rest periods to
4 PLAINTIFF and Class Members, the wage statements issued by DEFENDANTS failed to correctly
5 set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours
6 worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in
7 violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the
8 pay period and the corresponding number of hours worked at each hourly rate by the employee in
9 violation of Labor Code section 226(a)(9).

10 85. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and the
11 Class Members with proper, itemized wage statements as the wage statements provided by
12 DEFENDANTS did not accurately reflect the total hours worked per pay period due to
13 DEFENDANTS' automatic deduction policy and/or practice for unlawful meal periods, time-
14 rounding policies and practices, payment according to scheduled hours rather than actual hours
15 worked, and off-the-clock work policies and practices.

16 86. Separately, based on information and belief, DEFENDANTS failed to provide
17 PLAINTIFF and Class Members with wage statements that listed the correct name and address of
18 the legal entity that is the employer.

19 87. Based on information and belief, DEFENDANTS violated Labor Code section 226
20 by issuing wage statements to Class Members that failed to list all applicable hourly rates in effect
21 during the pay period, due to, including but not limited to, failing to list an hourly rate/overtime rate
22 at all and/or failing to list the correct overtime rate because DEFENDANTS did not incorporate all
23 non-discretionary compensation, such as, but not limited to, shift differential pay, piece rate
24 compensation and/or non-discretionary bonuses/incentive pay into the regular pay rate for purposes
25 of calculating the owed overtime rate.

26 88. Based on information and belief, DEFENDANTS violated Labor Code section
27 226(a)(3) by failing to list the number of piece-rate units earned and any applicable piece rate(s) for
28 Class Members who were paid on a piece rate basis.

1 89. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
2 Members have suffered injury. The absence of accurate information on Class Members' wage
3 statements has prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require
4 discovery and mathematical computations to determine the amount of wages owed, and will cause
5 difficulty and expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct
6 led to the submission of inaccurate information about wages and amounts deducted from wages to
7 state and federal government agencies. As a result, PLAINTIFF and the Class Members are required
8 to participate in this lawsuit and create more difficulty and expense for PLAINTIFF and the Class
9 Members from having to reconstruct time and pay records than if DEFENDANTS had complied
10 with their legal obligations.

11 90. Pursuant to California Labor Code section 226(e), PLAINTIFF and the Class
12 Members are entitled to recover fifty dollars per employee for the initial pay period in which a
13 Section 226 violation occurred and one hundred dollars per employee per violation for each
14 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

15 91. Pursuant to California Labor Code section 226(h), PLAINTIFF and the Class
16 Members are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance
17 with California Labor Code section 226(a). Injunctive relief is warranted because DEFENDANTS
18 continue to provide currently employed Class Members with inaccurate wage statements in violation
19 of California Labor Code section 226(a). Currently employed Class Members have no adequate
20 legal remedy for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing
21 unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS'
22 compliance with California Labor Code section 226(a).

23 92. Pursuant to California Labor Code sections 226(e) and 226(h), PLAINTIFF and the
24 Class Members are entitled to recover the full amount of penalties due under Section 226(e),
25 reasonable attorneys' fees, and costs of suit.

1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Reimburse Business Expenses**

3 **(Against All Defendants)**

4 93. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

5 94. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
6 were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by
7 their employer and/or carrying out the duties assigned by their employers.

8 95. Among other things, under California law, when employees must use their personal
9 cellphones for work-related purposes, the employer must reimburse them for a reasonable
10 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
11 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
12 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
13 Id. 1144-1145.

14 96. PLAINTIFF and the Class Members were improperly required to pay for business
15 expenses that are legally the responsibility of the employer, including but not limited to, data plan
16 charges incurred due to DEFENDANTS' requirement they use their personal cellphones/other
17 personal mobile communication devices in the discharge of their job duties, such as but not limited
18 to, for communicating with management about work scheduling/tasks, as well as expenses
19 associated with the purchase, provision and or maintenance of work tools, uniforms/work clothing
20 and/or personal protective equipment/safety equipment DEFENDANTS required.

21 97. DEFENDANTS did not reimburse PLAINTIFF and the Class Members in any way
22 for these business expenses incurred as a direct consequence of the discharge of their job duties or
23 any amount of reimbursement offered fell far below the amount paid out of pocket and or expenses
24 incurred by PLAINTIFF and the Class Members.

25 98. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
26 reimbursement for all reasonable expenses associated with carrying out their duties required that
27 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
28 violation of Labor Code section 2802.

99. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class Members have suffered injury in that they were not completely reimbursed as mandated by California law.

100. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable attorneys' fees, and costs of suit.

EIGHTH CAUSE OF ACTION

Unfair Competition

(Against All Defendants)

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

102. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200. This unfair conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and practices; DEFENDANTS' failure to compensate Class Members paid on a piece-rate and/or commission basis separately for all non-productive time; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest or pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized wage statements; DEFENDANTS' failure to provide paid sick leave/all paid time off provided in lieu thereof at the properly accrued rates due to, including but not limited to, DEFENDANTS' failure to base the accrued sick leave on the correct number of hours worked and/or incorporate all non-discretionary compensation, including but not limited to, non-discretionary bonus/incentive pay and/or shift differential pay, into the sick pay calculation; and DEFENDANTS' failure to reimburse business expenses.

103. Due to DEFENDANTS' unfair and unlawful business practices in violation of the California Labor Code, DEFENDANTS have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to authorize or permit rest and meal periods or pay proper meal and rest period premiums in lieu

1 thereof, to provide proper notice and properly accrue and pay sick time benefits, to provide complete
2 and accurate itemized wage statements, to reimburse employees for all business expenses, and to
3 pay all owed minimum and overtime wages.

4 104. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
5 and the Class Members have suffered injury in fact and lost money or property, as described in more
6 detail above. Pursuant to California Business and Professions Code section 17200, et seq.,
7 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
8 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of its
9 unlawful and unfair business practices.

10 105. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
11 Members, enjoining DEFENDANTS and any and all persons acting in concert with it from engaging
12 in each of the unlawful practices and policies set forth herein.

13 **NINTH CAUSE OF ACTION**

14 **Violation of the Private Attorneys General Act of 2004**

15 **(Against All Defendants)**

16 106. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

17 107. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
18 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of himself, the
19 State of California and Aggrieved Employees, regarding violations of the California Labor Code as
20 set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

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

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

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

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

7 109. On April 26, 2022, PLAINTIFF, through his counsel, gave written notice by online
8 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
9 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
10 in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's claims for violations
11 of the California Labor Code and the applicable wage orders on behalf of himself, the State of
12 California and other Aggrieved Employees. The LWDA assigned PLAINTIFF the following case
13 number: LWDA-CM-880580-22.

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

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

22 112. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
23 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
24 Labor Code sections: 201-203, 216, 221-223, 226, 226.2, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
25 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2810.5.

26 113. As set forth above, DEFENDANTS have committed numerous violations of the
27 California Labor Code due to, including but not limited to, their failure to pay all owed minimum
28 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation

1 in lieu thereof, failure to separately compensate employees paid on a piece-rate basis for non-
2 productive time, failure to provide accurate wage statements, and failure to reimburse business
3 expenses, and failure to pay all wages owed upon separation of employment as alleged above.
4 PAGA penalties are in addition to any other relief available under the Labor Code.

5 114. Additionally, DEFENDANTS have violated the following Labor Code sections and
6 provisions of the applicable Wage Order as to PLAINTIFF and Aggrieved Employees.

7 115. **Record Keeping Violations.** California Labor Code § 1174 requires employers to
8 keep “accurate and complete” payroll records showing, among other things, the hours worked daily
9 by all non-exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep
10 time records reflecting the times during which all owed meal periods were provided each day.

11 116. Due to DEFENDANTS’ automatic meal break deductions, failure to relieve
12 employees of all duties and employer control during meal periods, time rounding and/or payment
13 according to scheduled hours rather than actual hours worked, and other off-the-clock work policies
14 and practices described above, DEFENDANTS failed, and continue to fail, to keep accurate and
15 complete records as required by law, including but not limited to the following records: total daily
16 hours worked, applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved
17 Employees began and ended each work period, time records of meal periods, shift start times and
18 end times, and accurate itemized wage statements.

19 117. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
20 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
21 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
22 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
23 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
24 period during which the referenced statutes and Wage Order provisions were violated.²

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “i>n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 118. **Failure to Produce Employment Records/Violations of Labor Code Sections**
2 **226(b)-(c), 1198.5, and 432.**

3 119. *Time and Pay Records:* Labor Code section 226 and Wage Order 4-2001 (and all
4 applicable IWC Wage Orders), section 7 require that employers keep the following information on
5 file for each employee for a minimum of three years: The employee's dates of employment; the
6 employee's hourly rates and the corresponding number of hours worked by the employee at each
7 hourly rate, when the employee begins and ends each work period (including meal periods) and split
8 intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages
9 earned.

10 120. Section (b) of Labor Code section 226 further requires employers to "afford current
11 and former employees the right to inspect or receive a copy of records pertaining to their
12 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
13 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
14 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
15 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
16 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
17 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
18 the employer. Lab. Code section 226(f).

19 121. *Personnel Records:* In addition to their right to time and pay records, employees, and
20 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
21 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
22 section 432 further specifies that employers must furnish copies of all employment records bearing
23 the employee's signature.

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

1 123. Based on information and belief, DEFENDANTS fail to produce or make available
2 a current or former employee's personnel records and/or payroll records when requested pursuant
3 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example,
4 PLAINTIFF, through his counsel, sent a request for payroll and personnel records to EMPLOYER.
5 Yet, based on information and belief, EMPLOYER failed to produce/make available
6 COMPLAINANT's complete records within the time periods delineated by California labor law.
7 Based on information and belief, DEFENDANTS failed and continue to fail to timely produce
8 complete payroll and personnel records when requested by other Aggrieved Employees.

9 124. These violations subject employer to penalties under Labor Code sections 226,
10 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each
11 Aggrieved Employee, results in a separate civil penalty.

12 125. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
13 employer's refusal to pay wages due and payable and/or the denial of the validity of any claim to
14 wages due. DEFENDANTS violated and continue to violate this section by failing to pay
15 PLAINTIFF and other Aggrieved Employees for all hours worked at the proper wage rate and by
16 failing to pay an additional hour of pay for each meal/rest period not provided or that was otherwise
17 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
18 violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation
19 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
20 the statute provisions were violated.³

21 126. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
22 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
23 wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and
24 other Aggrieved Employees of all earned minimum and overtime compensation for all hours worked
25 which resulted in the payment of less than statutorily required wages. DEFENDANTS acted with
26

27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 the intent to deprive them of statutory wages, including, but not limited to, overtime wages and
2 minimum wages, to which they were entitled to under California law. Thus, DEFENDANTS paid
3 PLAINTIFF and other Aggrieved Employees lower wages than those they were entitled to while
4 purporting that PLAINTIFF and other Aggrieved Employees were properly paid. As a result,
5 PLAINTIFF and other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs,
6 and interest thereon, pursuant to Labor Code § 2699(f)-(g).

7 **127. Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
8 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
9 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
10 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
11 commission. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
12 record keeping provisions, minimum and overtime wages result in separate violations of sections
13 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1
14 and 2699.

15 **128. Sick Leave Violations.** DEFENDANTS violated California's paid sick leave laws
16 including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick
17 leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick
18 leave due to DEFENDANTS' failure to account for actual hours worked (as a result of the rounding/
19 automatic deduction policies and practices for meal periods and shift start and end times/ or other
20 required off-the-clock work described herein), and/or failure to incorporate all forms of non-
21 discretionary remuneration into the sick pay calculation and/or failure to provide paid sick leave at
22 all.

23 **129.** DEFENDANTS failed to give PLAINTIFF and other Aggrieved Employees notice
24 of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code
25 section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick
26 leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
27 Aggrieved Employees' intelligent exercise of their paid sick leave.

28 **130.** But for this failure, PLAINTIFF and other Aggrieved Employees would have used

1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

4 131. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
5 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
6 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
7 were entitled to the maximum number of hours accruable.

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

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

14 134. On information and belief, PLAINTIFF alleges that all of these practices were
15 experienced and continue to be experienced by other Aggrieved Employees.

16 135. **Unlawful Agreements/ Unlawful Criminal History Inquiries.**

17 136. Unlawful Agreements. Labor Code section 432.5 provides that "no employer...shall
18 require any employee or applicant for employment to agree, in writing, to any term or condition
19 which is known by such employer...to be prohibited by law." Based on information and belief,
20 DEEFENDANTS required PLAINTIFF and required/continue to require Aggrieved Employees to
21 agree in writing to submit to unlawful criminal and/or financial checks as a condition of obtaining
22 and/or continuing employment.

23 137. The California Labor Code places certain procedural and substantive limits on an
24 employers' ability to conduct employee background checks and on how employers can use the
25 information they obtain through those background checks. Labor Code section 1024.5 states that
26 employers, except for financial institutions, may order a credit check only if the individual works
27 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
28 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies

1 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
2 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
3 background check, including but not limited to identifying an appropriate reason for the background
4 check, a separate consent form with required disclosures and certain formatting requirements,
5 additional forms such as a summary of rights, a way by which to request a copy of the report, as
6 well as proper notice of adverse actions taken, among other statutory requirements.

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

11 139. Based on information and belief, DEFENDANTS required Aggrieved Employees to
12 submit and/or agree to submit in writing to unlawful criminal background checks which failed to
13 abide by the requirements set forth in Cal. Civ. Code section 1786 *et. Seq.*, and 15 U.S.C. section
14 1681, *et. seq.*, as a condition of obtaining and/or holding employment.

15 140. Based on information and belief, DEFENDANTS required PLAINTIFF and other
16 Aggrieved Employees to agree in writing to a background check which failed to abide by the
17 requirements set forth in CA Civil Code section 1786, *et seq.*, and 15 U.S.C. section 1681, *et seq.*,
18 including but not limited to by failing to provide a clear and conspicuous disclosure, failing to
19 provide disclosures free of extraneous information, failing to provide a lawful purpose for the
20 background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
21 failing to provide a way by which the individual could request a copy of the report, and failing to
22 properly obtain authorization or consent to such a background check, and thus was an unlawful
23 background check.

24 141. Based on further information and belief, DEFENDANTS also required Aggrieved
25 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
26 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
27 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
28 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

1 142. Based on further information and belief, DEFENDANTS knew that requiring
2 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
3 condition of obtaining and/or holding employment was unlawful.

4 143. By requiring that PLAINTIFF and other Aggrieved Employees sign off on the illegal
5 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

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

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

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

21 147. As such, Aggrieved Employees continue to be subject to various unlawful provisions
22 as a condition of employment. On information and belief, PLAINTIFF alleges that all of these
23 practices were experienced and continue to be experienced by other Aggrieved Employees.

24 148. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, including but
25 not limited to injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.
26 Under the provisions of PAGA and the following Labor Code sections, : 201-203, 216, 221-223,
27 226, 226.2, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197,
28 1197.1, 1198, 1198.5, 1199, 2802, and 2810.5, and all relevant sections of the applicable Wage

1 Orders, as well as all interpretations of these laws by California Courts and administrative bodies,
2 as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for all
3 statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California
4 Labor Code provisions listed herein, or for default PAGA penalties under Labor Code section
5 2699(f) for any violation of a Labor Code section without a specified civil penalty. Pursuant to Labor
6 Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover
7 civil penalties, costs, plus reasonable attorney's fees and costs, all in an amount to be proved.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
10 the Class Members and the Aggrieved Employees:

- 11 1. For an order that the action be certified as a class action;
- 12 2. For an order that PLAINTIFF be appointed class representative;
- 13 3. For an order that counsel for PLAINTIFF be appointed class counsel;
- 14 4. For compensatory damages according to proof;
- 15 5. For liquidated damages according to proof;
- 16 6. For penalties according to proof;
- 17 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
18 withheld from PLAINTIFF and the Class Members;
- 19 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
20 section 17200, et seq. of the California Business and Professions Code;
- 21 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 22 10. For pre-judgment interest as permitted by law;
- 23 11. For attorney's fees and costs reasonably incurred;
- 24 12. For civil penalties according to proof, including PAGA penalties; and

25 ///

26 ///

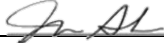
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1 13. For such other and further relief that the Court deems just and proper.

2
3 Dated: July 6, 2022

CROSNER LEGAL, PC

4 By: 

5 Michael R. Crosner, Esq.
6 Zachary M. Crosner, Esq.
7 Blake R. Jones, Esq.
8 Jamie Serb, Esq.
9 Nikki Trenner, Esq.
10 Attorneys for Plaintiff,
11 FRANCISCO CERVANTES

12 **DEMAND FOR JURY TRIAL**

13 PLAINTIFF demands a trial by jury on all claims so triable.

14 Dated: July 6, 2022

CROSNER LEGAL, PC

15 By: 

16 Michael R. Crosner, Esq.
17 Zachary M. Crosner, Esq.
18 Blake R. Jones, Esq.
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