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

12 MARIO BRICENO, on behalf of himself,
the State of California, and others similarly
13 situated and aggrieved,

14 Plaintiff,
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16 v.

17 MONOGRAM AEROSPACE
18 FASTENERS, INC., a Delaware
corporation; TRIMAS CORPORATION, a
19 Delaware corporation; and DOES 1-100,
inclusive,
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21 Defendants.
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Case No.: **22STCV21965**

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

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

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

27 5. Defendant MONOGRAM AEROSPACE FASTENERS, INC., is a Delaware
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1 corporation that, at all relevant times, was authorized to do business within the State of California
2 and is doing business in the State of California. Defendant TRIMAS CORPORATION, is a
3 Delaware corporation that, at all relevant times, was authorized to do business within the State of
4 California and is doing business in the State of California. DEFENDANTS and their managing
5 agents own, operate, or otherwise manage manufacturing companies that make engineering
6 products, including but not limited to, fasteners and other components for airplanes.
7 DEFENDANTS employed PLAINTIFF to work at DEFENDANTS' manufacturing facility located
8 in Los Angeles, California.

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

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

24 **JOINT LIABILITY**

25 8. Under California law, the definition of the terms "to employ" are broadly construed
26 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
27 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
28 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49

1 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
2 was to reach situations in which multiple entities control different aspects of the employment
3 relationship. Supervision of the work, in the specific sense of exercising control over how services
4 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
5 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
6 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
7 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
8 California, applying a less stringent standard to what constitutes sufficient control by a business
9 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
10 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
11 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
12 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
13 employment,” *Id.* at 875 [emphasis added].

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

21 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
22 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
23 human resources as set forth herein. Based on information and belief, Defendant Trimas
24 Corporation, owns, operates, or otherwise manages multiple entities under its umbrella and operates
25 multiple facilities in California, including but not limited to, DEFENDANTS’ facility located in Los
26 Angeles, California, where PLAINTIFF worked during the relevant period. Based on information
27 and belief, Defendant Monogram Aerospace Fasteners, Inc., is a subsidiary of Defendant Trimas
28 Corporation and administered payroll and issued wage statements to individuals employed at

1 facilities under the Trimas Corporation, umbrella. For example, various pay records identify
2 Defendant Monogram Aerospace Fasteners, Inc. as the employer entity. However, PLAINTIFF's
3 personnel file included documents, such as, but not limited to, employee code of conduct policies,
4 business protection agreement(s), among other personnel/employment policy documents identifying
5 Trimas Corporation, as the employer. Moreover, based on information and belief, DEFENDANTS,
6 and each of them, maintain the same headquarters/principal office in Bloomfield Hills, Michigan
7 (3805 Woodward Ave Suite 200 Bloomfield Hills, MI 48304). As a result, DEFENDANTS utilized
8 the same unlawful wage and hour policies and practices across all of their California
9 locations/facilities and subjected all of the Aggrieved Employees to these same policies and
10 practices regardless of the location(s) or facilities where they worked in California. Among other
11 things, PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial
12 control, in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who
13 have control over the day-to-day operations and employment matters, including the power to hire
14 and fire, set schedules, issue employee policies, and determine rates of compensation across its
15 locations in California; (3) DEFENDANTS utilize the same policies and procedures for all
16 California employees, including issuing the same employee handbooks and other form agreements;
17 (4) DEFENDANTS use at least some of the same Human Resources personnel and attorneys to
18 oversee employment matters; and, (6) DEFENDANTS share employees.

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

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

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

17 **PAGA ALLEGATIONS**

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

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

24 14. 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 15. On April 21, 2022, PLAINTIFF BRICENO, through his counsel, gave written
8 notice by online filing with the California Labor and Workforce Development Agency ("LWDA")
9 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
10 allegations alleged in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's
11 claims for violations of the California Labor Code and the applicable wage orders on behalf of
12 himself, the State of California and other Aggrieved Employees. The LWDA assigned PLAINTIFF
13 the following case number: LWDA-CM-879749-22. PLAINTIFF, through his counsel, also sent
14 the PAGA Notice to DEFENDANTS via certified mail, on April 21, 2022.

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

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

23 **FACTUAL ALLEGATIONS**

24 18. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were employed
25 by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised control over
26 PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them to work.
27 PLAINTIFF and the Aggrieved Employees worked in various job positions, including but not
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1 limited to, CNC Machine Operators, machine operators, assembly machine workers, grinders,
2 maintenance mechanics and/or other similar title(s).

3 19. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during the
4 PAGA Period and was subject to one or more of the Labor Code violations alleged herein.
5 PLAINTIFF worked for DEFENDANTS as a CNC Machine Operator and/or other similar title(s)
6 until the termination of his employment, on or about May 13, 2021.

7 20. PLAINTIFF typically worked at least ten (10) hours per day, at least five (5) days a
8 week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as
9 hours worked. Based on information and belief, Aggrieved Employees were also compensated with
10 non-discretionary remuneration, including but not limited to, shift differential pay and/or
11 bonuses/incentive pay.

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

22 22. PLAINTIFF and other Aggrieved Employees were consistently unable to take timely,
23 off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods,
24 interrupted meal periods and/or work through part or all their meal periods due to the nature and
25 constraints of their job duties, lack of relief workers available, and/or commentary from supervisors
26 pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. For
27 example, PLAINTIFF estimates he had to take a late meal period (i.e. past the fifth hour of work),
28 was interrupted during his meal period and/or worked through his meal period at least ten times per

1 month because of understaffing/lack of relief workers and/or the nature and constraints of his job
2 duties, including but not limited to, the need to monitor machinery to keep up with DEFENDANTS'
3 unreasonably demanding production schedule and/or complete other work tasks. Based on
4 information and belief, other Aggrieved Employees were also consistently forced to take late,
5 interrupted/shortened meal periods and/or work through their meal periods due to lack of available
6 relief workers and/or the need to attend to machinery/keep up with the production schedule and/or
7 complete other work tasks. For example, based on information and belief, at times, PLAINTIFF
8 and other Aggrieved Employees were forced to take their meal periods at and while working their
9 machines so they could meet production deadlines/quotas and/or complete other work tasks. Based
10 on information and belief, other Aggrieved Employees were instructed by their supervisors to clock
11 out for meal periods but to continue working so that they could meet production deadlines/quotas
12 and/or complete other work tasks.

13 23. DEFENDANTS implemented policies and/or practices that failed to relieve Aggrieved
14 Employees of all duties and DEFENDANTS' control during meal breaks. For example, based on
15 information and belief, Aggrieved Employees were required to monitor and be responsive to work
16 communication devices during purportedly off-duty meal periods and/or were required to remain
17 on DEFENDANTS' premises and tethered to their worksites during purported meal periods. As
18 such, PLAINTIFF and Aggrieved Employees remained subjected to DEFENDANTS' control
19 during meal periods.

20 24. Based on information and belief, DEFENDANTS implemented a policy and/or
21 practice of automatically deducting/requiring Aggrieved Employees to clock out for at least thirty
22 minutes per shift for these missed or noncompliant meal periods, despite having actual and/or
23 constructive knowledge that Aggrieved Employees did not receive compliant meal periods.

24 25. Based on information and belief, DEFENDANTS rounded the start and end times of
25 Aggrieved Employees' meal periods and/or required Aggrieved Employees to record scheduled
26 meal times rather than actual meal times resulting in Aggrieved Employees not being paid for all
27 time worked as well as late or shortened meal periods.

28 26. Based on information and belief, Aggrieved Employees often completed off-the-clock

1 work prior to their scheduled shift time which DEFENDANTS failed to take into account when
2 scheduling meal periods for Aggrieved Employees. Based on information and belief, meal periods
3 were late, in part due to unaccounted pre-shift off-the-clock work.

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

8 28. Moreover, DEFENDANTS failed to provide a second meal break to PLAINTIFF and
9 Aggrieved Employees that worked shifts of more than ten hours. DEFENDANTS failed to provide
10 PLAINTIFF and Aggrieved Employees with a second, duty-free, uninterrupted, thirty-minute meal
11 period even though PLAINTIFF and Aggrieved Employees worked more than ten hours in a
12 workday and thus were entitled to a second duty-free, uninterrupted, thirty-minute meal period
13 before the end of the tenth hour of work. Per DEFENDANTS' unlawful meal period policies and
14 practices, DEFENDANTS only provided a single meal period per shift during shifts lasting longer
15 than ten and/or twelve hours and that single meal period was often non-compliant. For example,
16 PLAINTIFF regularly worked shifts lasting over ten and/or twelve hours without being provided
17 any second meal period, and his first meal period was often noncompliant.

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

26 30. **Denied Rest Periods.** DEFENDANTS did not authorize or permit PLAINTIFF and
27 other Aggrieved Employees to take legally compliant rest periods at a rate of every four (4) hours
28 worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work

1 period, as required by law. PLAINTIFF and other Aggrieved Employees were not adequately
2 informed, authorized, instructed about, nor permitted an opportunity to take legally compliant rest
3 breaks.

4 31. PLAINTIFF and other Aggrieved Employees were consistently unable to take a net, ten-
5 minute, off-duty rest period for every four (4) hours worked or major fraction thereof because of the
6 nature and constraints of their job duties and/or commentary from supervisors pressuring them to
7 take non-compliant rest breaks or skip rest breaks completely. Any purported rest periods would be
8 interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints
9 of other Aggrieved Employees' job duties, understaffing, and/or commentary from supervisors
10 pressuring them to skip rest breaks completely and/or take non-compliant rest breaks. PLAINTIFF
11 and other Aggrieved Employees were pressured to complete their work duties according to a
12 designated schedule such that rest breaks were only taken once jobs were completed/as time
13 permitted. For example, PLAINTIFF was consistently forced to cut his rest breaks short or skip
14 them completely due to the need to attend to running machinery, meet production deadlines, and/or
15 due to lack of relief workers. Based on information and belief, other Aggrieved Employees were
16 also forced to take non-compliant rest periods and/or or work their rest periods completely due to
17 the need to attend to machinery, meet production deadlines and/or due to lack of relief workers.
18 Moreover, DEFENDANTS had a uniform policy and practice of failing to provide third rest periods
19 to PLAINTIFF and other Aggrieved Employees who worked shifts lasting longer than ten hours.
20 For example, PLAINTIFF usually worked shifts lasting at least ten hours, but was not afforded any
21 third rest period during those shifts lasting more than ten hours and any purported rest periods
22 provided during those shifts were typically noncompliant.

23 32. Based on information and belief, DEFENDANTS did not have a lawful policy,
24 instruction, or practice as to the taking, timing or duty-free nature of rest periods. For example,
25 based on information and belief, DEFENDANTS failed to authorize and permit rest periods that
26 were a "net" ten minutes in a suitable rest area; instead, to the extent rest periods were provided,
27 DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-minute rest
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1 periods, requiring them to be back at their workstations within ten minutes of leaving, in violation
2 of California rest period law.

3 33. Based on information and belief, DEFENDANTS implemented policies and practices
4 that failed to relieve the Aggrieved Employees of all duties and employer control during any rest
5 periods. For example, DEFENDANTS required PLAINTIFF to remain on the worksite premises
6 and/or tethered to work-communication devices during any rest periods. As such, PLAINTIFF and
7 other Aggrieved Employees remained under DEFENDANTS' control during any rest periods,
8 rendering said rest periods on duty and therefore noncompliant with California rest period law.
9 Despite not providing PLAINTIFF and other Aggrieved Employees with all owed legally compliant
10 rest periods, DEFENDANTS did not pay PLAINTIFF and other Aggrieved Employees an additional
11 hour of wages at their respective regular rates of pay for any missed/non-compliant rest period.

12 34. **Unpaid Minimum Wages and Overtime Wages.** DEFENDANTS failed to
13 compensate all hours worked, including all owed minimum wages and overtime wages, including
14 double time wages. As explained above, Aggrieved Employees were regularly required to perform
15 off-the-clock work by virtue of DEFENDANTS' automatic-deduction policy for meal periods.

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

1 36. Based on information and belief, DEFENDANTS had and continue to have a continuous
2 policy of paying PLAINTIFF and other Aggrieved Employees for scheduled hours, rather than
3 actual hours worked. DEFENDANTS' failure to pay for all time worked by virtue of its time-
4 rounding practices and/or only paying for scheduled hours rather than for actual time worked
5 resulted in the underpayment of minimum wages owed to PLAINTIFF and other Aggrieved
6 Employees as well as unpaid overtime wages for PLAINTIFF and those Aggrieved Employees who
7 worked more than eight (8) hours in a day and/or forty hours in a week.

8 37. Furthermore, PLAINTIFF and other Aggrieved Employees were consistently required
9 to perform pre-shift and/or post-shift off-the-clock work. For example, upon arriving at work,
10 PLAINTIFF and other Aggrieved Employees were typically required to stand in long employee
11 lines to access DEFENDANTS' electronic/biometric time-keeping system before they could clock
12 in for the start of their shifts each day. This off-the-clock pre-shift work, including but not limited
13 to, time spent waiting for other employees to clock in for their shifts, was not compensated, resulting
14 in an average of at least several minutes of uncompensated work time each workday and the
15 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
16 Employees.

17 38. Based on information and belief, DEFEENDANTS had and have a uniform policy and
18 practice of prohibiting Aggrieved Employees from clocking in prior to their scheduled shift start
19 times while requiring that they consistently perform pre-shift off-the-clock work that was neither
20 recorded nor compensated.

21 39. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
22 required to complete other off-the-clock work tasks after clocking out for the end of their shifts
23 and/or during uncompensated meal periods, resulting in significant off-the-clock work and the
24 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
25 Employees.

26 40. Based on information and belief, DEFENDANTS did not compensate Aggrieved
27 Employees for time spent donning and doffing personal protective equipment, safety equipment
28 and/or uniforms and/or work clothing/shoes (e.g., safety goggles/glasses and/or face masks) during

1 meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled
2 shift.

3 41. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
4 Employees for time they were required to spend completing training and certification and/or the
5 onboarding process. For example, based on information and belief, DEFENDANTS required
6 Aggrieved Employees to review and sign various types of policies and documents, including but not
7 limited to, safety guidelines/safety awareness certifications, employee attendance policies,
8 employee time-keeping policies, among other documents, but they were not paid for all time spent
9 reviewing and/or completing certification as directed by DEFENDANTS. Based on information
10 and belief, DEFENDANTS had a uniform policy and practice of requiring Aggrieved Employees to
11 complete mandatory off-the-clock administrative tasks, onboarding, training, certification,
12 reviewing policy documents, and/or other tasks without compensating for all hours worked.

13 42. Based on further information and belief, DEFENDANTS' electronic/biometric
14 employee time-keeping system regularly malfunctioned such that Aggrieved Employees were
15 frequently required to either reinitiate the system prior to being able to clock in and/or were unable
16 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in
17 consistent off-the-clock work and the underpayment of minimum and overtime wages owed to
18 Aggrieved Employees. Based on information and belief, Aggrieved Employees experienced the
19 same issues when clocking out for shifts and/or back in for meal periods. This time spent under
20 DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum
21 wages.

22 43. Based on further information and belief, DEFENDANTS rounded the start and end
23 times of Aggrieved Employees' meal periods and shift start and end times resulting in Aggrieved
24 Employees not being paid for all time worked.

25 44. Based on further information and belief, DEFENDANTS also failed to pay the
26 correct overtime and double time rates to PLAINTIFF and other Aggrieved Employees due to
27 DEFENDANTS' failure to incorporate all forms of non-discretionary compensation, including but
28 not limited to, shift differential pay and/or non-discretionary bonus/incentive pay and/or other forms

1 of non-discretionary pay, into the regular rate(s) of pay for purposes of calculating the owed
2 overtime rate and the owed double time rate resulting in the underpayment of overtime and double
3 time wages owed. For example, based on information and belief, DEFENDANTS compensated
4 Aggrieved Employees with shift differential pay, e.g., for working the graveyard shift, and/or
5 bonus/incentive pay, however, DEFENDANTS failed to incorporate all non-discretionary
6 compensation into the regular rate(s) used to calculate the overtime rate(s), resulting in the
7 underpayment of overtime wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

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

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

26 49. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
27 provide PLAINTIFF and the Aggrieved Employees with accurate wage statements that complied
28 with Labor Code section 226. DEFENDANTS provided wage statements that failed to indicate the

1 total wages earned (including meal and rest period premiums), and total hours worked by
2 PLAINTIFF and other Aggrieved Employees (by virtue of the time-rounding/payment according to
3 scheduled hours rather than actual hours worked and other off-the-clock work policies and
4 practices), including but not limited to, whenever working a shift in which the employee earned a
5 shift differential). Accordingly, DEFENDANTS violated Labor Code section 226 by providing
6 wage statements that were inaccurate and failed to include all of the statutorily required information,
7 including but not limited to, total hours worked.

8 50. Separately, based on information and belief, DEFENDANTS violated Labor Code
9 section 226 because the wage statements issued by DEFENDANTS failed to list the correct name
10 and address of the legal entity that is the employer. For example, wage statements issued by
11 DEFENDANTS to PLAINTIFF list “Monogram/Aerospace Fasteners” as the legal name of the
12 employer. However, various documents in PLAINTIFF’s personnel file indicate that “TriMas
13 Corporation” is the employer. As a result, the wage statements provided to PLAINTIFF and the
14 Aggrieved Employees were not accurate and did not include all of the statutorily required
15 information, including but not limited to the name and address of the legal entity that is the
16 employer.

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

24 52. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as they
25 could not easily determine whether they received all wages owed to them and whether they were
26 paid for all hours worked. Moreover, as a result of DEFENDANTS’ failure to list the correct legal
27 entity that is the employer, PLAINTIFF and the Aggrieved Employees have suffered injury as there
28

1 was confusion as to which entity to contact regarding any question(s) they had about wages paid
2 and unpaid.

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

25 **54. Failure to Provide Supplemental Paid Sick Leave.** Labor Code section 248.2
26 provides that all employers with 26 or more employees are required to provide up to 80 hours
27 for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for
28 themselves, to care for a family member or if it is vaccine-related. Based on information and

1 belief, DEFENDANTS violated Labor Code section 248.2 by not providing Aggrieved
2 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

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

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

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

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

1 equipment and/or safety gear. For example, based on information and belief, at times,
2 DEFENDANTS required Plaintiff and other Aggrieved Employees to use their cell phones to
3 receive and or make work-related phone calls/text messages regarding scheduling/other work tasks
4 without providing reimbursement for these business expenses.

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

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

13 61. Based on information and belief, DEFENDANTS failed to provide Aggrieved
14 Employees with suitable resting facilities during their hours of work, particularly during meal and/or
15 rest periods. Moreover, DEFENDANTS did not inform Aggrieved Employees of their right to
16 suitable resting facilities under California law.

17 62. Based on information and belief, DEFENDANTS could have provided Aggrieved
18 Employees with a suitable resting facility within the manufacturing facilities/ other work facilities
19 with reasonable or no modification, but instead denied and continues to deny, employees with
20 suitable areas to rest.

21 63. DEFENDANTS' failure to provide suitable resting facilities to Aggrieved Employees
22 violated and continues to violate all applicable Wage Orders, section 13(B) and the California Labor
23 Code, including but not limited to section 1198.

24 64. **Seating Violations:** Per section 14(A-B) of all applicable IWC Wage Orders, employees
25 shall be provided with suitable seats when the nature of the work reasonably permits the use of seats
26 and when they are not actively engaged in the work duties that would not permit them to be seated.

27 65. All applicable IWC Wage Orders, Section 14(A-B) provides:
28

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

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

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

11 67. Based on information and belief, DEFENDANTS failed to provide Aggrieved
12 Employees with suitable seating, and when such employees were not engaged in duties which
13 required them to stand, no seating was placed in reasonable proximity to their workstations.

14 68. Moreover, based on information and belief, the nature of the work reasonably permitted
15 the use of seats for at least part of the time that Aggrieved Employees were working. Lastly, there
16 were periods of time when Aggrieved Employees were not engaged in active duties of their
17 employment, yet there were no suitable seats in reasonable proximity to the work area and use of
18 seats would not interfere with the performance of their duties.

19 69. DEFENDANTS' Aggrieved Employees worked in various positions. The nature of
20 PLAINTIFF's and other Aggrieved Employees' work reasonably permitted the use of seats.
21 However, DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved
22 Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor
23 Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code
24 sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision,
25 for each Aggrieved Employee, results in a separate civil penalty.

26 70. **Temperature Violations: All Applicable IWC Wage Orders, Section 15:** Labor
27
28

1 Code section 1198 requires an employer to comply with the standard conditions of labor for
2 California employees as set forth in Section 15 of the IWC Wage Orders, including the applicable
3 Wage Order, which states:

4 (A) The temperature maintained in each work area shall provide reasonable comfort consistent with
5 industry-wide standards for the nature of the process and the work performed.

6 (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible
7 means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where
8 the nature of the employment requires a temperature of less than 60° F, a heated room shall be
9 provided to which employees may retire for warmth, and such room shall be maintained at not less
10 than 68°.

11 (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and
12 change rooms during hours of use.

13 (D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

14 71. On information and belief, DEFENDANTS regularly subjected PLAINTIFF and other
15 Aggrieved Employees to work areas that were excessively hot and/or humid resulting in
16 temperatures that exceeded the range of industry standards for the nature of the process and the work
17 performed by PLAINTIFF and other Aggrieved Employees

18 72. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
19 other Aggrieved Employees with reasonable comfort by maintaining the indoor temperature within
20 the range of industry standards by, including but not limited to, providing adequate air conditioning
21 and or proper ventilation. For example, based on information and belief, temperatures in
22 DEFENDANTS' manufacturing facility where PLAINTIFF and other Aggrieved Employees
23 worked was excessively hot and/or humid, regularly resulting in temperatures exceeding 90 degrees
24 Fahrenheit, due to, including but not limited to, DEFENDANTS' practice of failing to provide
25 adequate artificial air conditioning and/ or fans and/or proper ventilation within the work facility.
26 Based on information and belief, the DEFENDANTS failed to take all feasible means to reduce the
27 excessive heat or humidity created by the work process to a degree providing reasonable comfort
28 for PLAINTIFF and other Aggrieved Employees.

1 73. These practices and policies resulted in DEFENDANTS' failure to maintain
2 temperature providing reasonable comfort in violation of Labor Code section 1198 and Section 15
3 of the IWC Wage Orders, including the applicable Wage Order.

4 **74. Failure to Provide Recovery Periods:** Pursuant to Labor Code section 226.7(b), an
5 employer is prohibited from requiring an employee to work during a recovery period mandated by
6 an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
7 Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational
8 Safety and Health.

9 75. Pursuant to Section 15 of IWC Wage Orders applicable to Aggrieved Employees, the
10 temperature maintained in each work area "shall provide reasonable comfort consistent with
11 industry-wide standards for the nature of the process and the work performed."

12 76. DEFENDANTS was required to authorize and permit Aggrieved Employees to take
13 recovery periods, due to, including but not limited to, the intense heat conditions in the work area
14 and consistent with industry-wide standards for the type of labor Aggrieved Employees were
15 required to perform.

16 77. DEFENDANTS failed to authorize or permit Aggrieved Employees to take recovery
17 periods as required by California law. Based on information and belief, DEFENDANTS suffered
18 and permitted Aggrieved Employees to work under intense heat conditions without allowing
19 Aggrieved Employees to take recovery periods as needed to prevent heat-related illness.

20 78. Based on information and belief, DEFENDANTS did not have a policy or practice in
21 place that authorized or permitted Aggrieved Employees to take recovery periods when suffering
22 from heat-related illness despite creating working conditions that exposed Aggrieved Employees to
23 extreme heat conditions. Aggrieved Employees were unable to take proper recovery periods due to,
24 including but not limited to, lack of relief workers available/scheduling issues, having to meet quotas
25 and/or having to monitor machinery.

26 79. DEFENDANTS did not pay Aggrieved Employees one additional hour of pay at their
27 respective regular pay rate(s) for each workday a recovery period was not provided as required by
28 law, in violation of California Labor Code section 226.7 and all applicable IWC Wage Orders. Each

1 violation of each Labor Code section and IWC Wage Order provision, for each Aggrieved
2 Employee, results in a separate civil penalty.

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

8 **81.** Therefore, DEFENDANTS' violations with respect to, including but not limited to, meal
9 periods, rest and recovery periods, recordkeeping provisions, minimum wages and overtime wages,
10 failure to provide seating and suitable resting facilities and maintain adequate workplace
11 temperatures, and unreimbursed business expenses result in separate violations of sections 1198 and
12 1199.

13 **82. Unlawful Deductions.** Labor Code section 221 prohibits an employer from “collect[ing]
14 or receiv[ing] from an employee any part of wages theretofore paid by said employer to said
15 employee.” Based on information and belief DEFENDANTS made unlawful deductions from
16 Aggrieved Employees paychecks during the relevant period, by including but not limited to
17 unlawfully deducting wages paid in previous pay periods and/or costs advanced by DEFENDANTS
18 from Aggrieved Employees’ final paychecks. Such a practice is in violation of including but not
19 limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under
20 Labor Code Section 2699.

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

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

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

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

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

22 **87. Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and**
23 **432. Time and Pay Records:** Labor Code section 226 and all applicable IWC Wage Orders, section
24 7 require that employers keep the following information on file for each employee for a minimum
25 of three years: The employee's dates of employment; the employee's hourly rates and the
26 corresponding number of hours worked by the employee at each hourly rate, when the employee
27 begins and ends each work period (including meal periods) and split intervals; total hours worked
28 by the employee; all deductions; gross wages earned; and net wages earned.

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

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

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

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

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

9 92. As such, Aggrieved Employees continue to be subject to various unlawful provisions as
10 a condition of employment.

11 93. Each violation of each Labor Code section and Wage Order provision results in a
12 separate civil penalty for PLAINTIFF and each Aggrieved Employee.

13 **FIRST CAUSE OF ACTION**

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

15 **SECTIONS 2698, ET SEQ.**

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

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

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

24 96. Employers must also provide employees with a second duty-free, uninterrupted thirty-
25 minute meal period when an employee works more than (10) hours in a workday, and it must be
26 provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under
27 the following circumstances: (1) if an employee's total work period in a day is over five (5) hours
28 but no more than six (6) hours, the required meal period may be waived by mutual consent of the

1 employer and employee; and (2) if an employee's total work period in a day is over ten (10) hours
2 but no more than twelve (12) hours, the required second meal period may be waived by mutual
3 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

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

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

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

26 100. Based on information and belief, DEFENDANTS rounded the start and end times of
27 employees' meal periods and/or automatically deducted thirty minutes per shift despite having
28 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not

1 receive compliant meal periods.

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

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

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

27 104. As explained above, DEFENDANTS did not properly authorize and provide
28

1 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
2 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
3 middle of the work period, as required by law. Any purported rest periods were consistently
4 interrupted, cut short, on duty, restricted to premises and/or late.

5 105. Moreover, based on information and belief, DEFENDANTS failed to pay
6 PLAINTIFF and other Aggrieved Employees an additional hour of pay at PLAINTIFF's and other
7 Aggrieved Employees' respective regular rates of compensation for each missed or improper rest
8 period. DEFENDANTS either failed to may any rest period premium at all or failed to pay the
9 proper rest period premium for failure to incorporate all non-discretionary remuneration including
10 but not limited to, non-discretionary bonuses/incentive pay and/or shift differential pay and/or other
11 non-discretionary compensation into the regular rate of compensation for purposes of calculating
12 the owed rest period premium.

13 106. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
14 all applicable IWC Wage Orders, section 12. These violations subject DEFENDANTS to civil
15 penalties under Labor Code sections 558 and 2699, and all applicable Wage Orders, section 20.

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

24 108. California law also provides that employees in California must be paid overtime,
25 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
26 week or 8 hours per day. See Labor Code section 510 and the applicable Wage Order section 3.
27 Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked
28

1 beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the
2 seventh consecutive day of work in a work week. Ibid.

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

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

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

1 the regular pay rate used to calculate the owed overtime rate resulted in a miscalculation of the
2 overtime wage rate, resulting in the underpayment of overtime (and “double time”) wages owed to
3 Aggrieved Employees.

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

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

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

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

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

8 116. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
9 they could not easily determine whether they received all wages owed to them and whether they
10 were paid for all hours worked.

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

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

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

25 120. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved
26 Employees notice of their paid sick leave rights - or thereby putting their entitlement to sick
27 leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain

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

1 accurate records of used sick leave and the balance of paid sick leave left to the employees,
2 which affected PLAINTIFF and Aggrieved Employees' intelligent exercise of their paid sick
3 leave.

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

8 122. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain
9 records documenting the hours worked and paid sick days accrued and used by PLAINTIFF
10 and all Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved
11 Employees were entitled to the maximum number of hours accruable.

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

17 124. These practices violated California's sick leave laws, Labor Code section 245, et
18 seq.

19 125. On information and belief, PLAINTIFF alleges that all of these practices were
20 experienced and continue to be experienced by other Aggrieved Employees.

21 126. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA,
22 including but not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as
23 permitted by law.

24 127. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code section 248.2
25 provides that all employers with 26 or more employees are required to provide up to 80 hours
26 for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for
27 themselves, to care for a family member or if it is vaccine-related. Based on information and
28

1 belief, DEFENDANTS violated Labor Code section 248.2 by not providing Aggrieved
2 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

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

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

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

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

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

26 132. **Failure to Provide Suitable Resting Facilities:** Per section 13 of all applicable IWC
27
28

1 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
2 Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the
3 toilet rooms and shall be available to employees during work hours.”

4 133. Based on information and belief, DEFENDANTS failed to provide Aggrieved
5 Employees with suitable resting facilities during their hours of work, particularly during meal and/or
6 rest periods. Moreover, DEFENDANTS did not inform Aggrieved Employees of their right to
7 suitable resting facilities under California law.

8 134. Based on information and belief, DEFENDANTS could have provided Aggrieved
9 Employees with a suitable resting facility within the manufacturing facility with reasonable or no
10 modification, but instead denied and continues to deny, employees with suitable areas to rest.

11 135. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved
12 Employees violated and continues to violate all applicable Wage Orders, section 13(B) and the
13 California Labor Code, including but not limited to section 1198.

14 136. **Seating Violations:** Per section 14(A-B) of all applicable IWC Wage Orders,
15 employees shall be provided with suitable seats when the nature of the work reasonably permits the
16 use of seats and when they are not actively engaged in the work duties that would not permit them
17 to be seated.

18 137. All applicable IWC Wage Orders, Section 14(A-B) provides:

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

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

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

1 139. Based on information and belief, DEFENDANTS failed to provide Aggrieved
2 Employees with suitable seating, and when such employees were not engaged in duties which
3 required them to stand, no seating was placed in reasonable proximity to their workstations.

4 140. Moreover, based on information and belief, the nature of the work reasonably
5 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
6 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
7 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
8 of seats would not interfere with the performance of their duties.

9 141. DEFENDANTS' Aggrieved Employees worked in various positions. The nature of
10 PLAINTIFF's and other Aggrieved Employees' work reasonably permitted the use of seats.
11 However, DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved
12 Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor
13 Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code
14 sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision,
15 for each Aggrieved Employee, results in a separate civil penalty.

16 142. **Temperature Violations: All Applicable IWC Wage Orders, Section 15:** Labor
17 Code section 1198 requires an employer to comply with the standard conditions of labor for
18 California employees as set forth in Section 15 of the IWC Wage Orders, including the applicable
19 Wage Order, which states:

20 (A) The temperature maintained in each work area shall provide reasonable comfort consistent with
21 industry-wide standards for the nature of the process and the work performed.

22 (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible
23 means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where
24 the nature of the employment requires a temperature of less than 60° F, a heated room shall be
25 provided to which employees may retire for warmth, and such room shall be maintained at not less
26 than 68°.

27 (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and
28 change rooms during hours of use.

1 (D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

2 143. On information and belief, PLAINTIFF and other Aggrieved Employees were
3 subjected to excessive heat and/or humidity resulting in temperatures exceeding 90° F and/or to
4 excessive cold temperatures during colder times of the year, including temperatures of less than 68°
5 in including but not limited to, the toilet rooms, resting rooms, and or change rooms during hours
6 of use.

7 144. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
8 other Aggrieved Employees with reasonable comfort by maintaining the indoor temperature within
9 the range of industry standards by, including but not limited to, providing adequate air conditioning
10 and or proper ventilation. For example, based on information and belief, temperatures in
11 DEFENDANTS' manufacturing facility where PLAINTIFF and other Aggrieved Employees
12 worked was excessively hot, due to, including but not limited to, DEFENDANTS' practice of failing
13 to provide adequate artificial air conditioning and/ or fans and/or proper ventilation within the work
14 facility. Based on information and belief, the DEFENDANTS failed to take all feasible means to
15 reduce the excessive heat or humidity created by the work process to a degree providing reasonable
16 comfort for PLAINTIFF and other Aggrieved Employees.

17 145. These practices and policies resulted in DEFENDANTS' failure to maintain
18 temperature providing reasonable comfort in violation of Labor Code section 1198 and Section 15
19 of the IWC Wage Orders, including the applicable Wage Order.

20 146. **Failure to Provide Recovery Periods:** Pursuant to Labor Code section 226.7(b), an
21 employer is prohibited from requiring an employee to work during a recovery period mandated by
22 an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
23 Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational
24 Safety and Health.

25 147. Pursuant to Section 15 of IWC Wage Orders applicable to Aggrieved Employees,
26 the temperature maintained in each work area "shall provide reasonable comfort consistent with
27 industry-wide standards for the nature of the process and the work performed."

28 148. DEFENDANTS was required to authorize and permit Aggrieved Employees to take

1 recovery periods, due to, including but not limited to, the intense heat conditions in the work area
2 and consistent with industry-wide standards for the type of labor Aggrieved Employees were
3 required to perform.

4 149. DEFENDANTS failed to authorize or permit Aggrieved Employees to take recovery
5 periods as required by California law. Based on information and belief, DEFENDANTS suffered
6 and permitted Aggrieved Employees to work under intense heat conditions without allowing
7 Aggrieved Employees to take recovery periods as needed to prevent heat-related illness.

8 150. Based on information and belief, DEFENDANTS did not have a policy or practice
9 in place that authorized or permitted Aggrieved Employees to take recovery periods when suffering
10 from heat-related illness despite creating working conditions that exposed Aggrieved Employees to
11 extreme heat conditions. Aggrieved Employees were unable to take proper recovery periods due to,
12 including but not limited to, lack of relief workers available/scheduling issues, having to meet quotas
13 and/or having to monitor machinery.

14 151. DEFENDANTS did not pay Aggrieved Employees one additional hour of pay at their
15 respective regular pay rate(s) for each workday a recovery period was not provided as required by
16 law, in violation of California Labor Code section 226.7 and all applicable IWC Wage Orders. Each
17 violation of each Labor Code section and IWC Wage Order provision, for each Aggrieved
18 Employee, results in a separate civil penalty.

19 152. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
20 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
21 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
22 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
23 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
24 meal periods, rest and recovery periods, recordkeeping provisions, minimum wages and overtime
25 wages, failure to provide suitable resting facilities and seating, temperature violations and
26 unreimbursed business expenses, result in separate violations of sections 1198 and 1199, which
27 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

28 153. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from

1 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
2 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
3 from Aggrieved Employees’ paychecks during the relevant period, by including but not limited to
4 unlawfully deducting wages paid in previous pay periods and/or costs advanced by DEFENDANTS
5 from Aggrieved Employees’ final paychecks. Such a practice is in violation of including but not
6 limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under
7 Labor Code Section 2699.

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

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

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

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

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

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

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

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

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

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

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

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

10 163. Under the provisions of PAGA and the above-mentioned Labor Code sections and,
11 including but not limited to, Labor Code sections 201-203, 216, 221-223, 226, 226.7, 245-248.5,
12 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1198.5,
13 1199, 2802, 2810.5 and all applicable Wage Orders as well as all interpretations of these laws by
14 California Courts and administrative bodies, as well as any other law that is enforceable through
15 PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: July 7, 2022

CROSNER LEGAL, PC

By: 
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Attorneys for Plaintiff,
MARIO BRICENO