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Superior Court of California,
County of Alameda

08/17/2022 at 01:36:18 PM

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on behalf of himself, the State of California,
10 and others similarly situated and aggrieved

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**
13

14 OSCAR BARAJAS, on behalf of himself,
the State of California, and others similarly
15 situated and aggrieved,

16 Plaintiff,
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18 v.
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20 CPC LOGISTICS SOLUTIONS, LLC, a
Missouri limited liability company; CPC
21 LOGISTICS INC., a Missouri corporation;
NEWCO DISTRIBUTORS, INC., a
22 California corporation; and DOES 1-100,
inclusive,
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24 Defendants.
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Case No.: **22CV016357**

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

1 Plaintiff OSCAR BARAJAS ("PLAINTIFF" or "PLAINTIFF BARAJAS"), an individual
2 on behalf of himself, the State of California, and all other Aggrieved Employees (defined below),
3 hereby files this Complaint against Defendant CPC LOGISTICS SOLUTIONS, LLC, a Missouri
4 limited liability company; CPC LOGISTICS INC., a Missouri corporation; NEWCO
5 DISTRIBUTORS, INC., a California corporation; and DOES 1-100, inclusive (collectively referred
6 to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges as
7 follows:

8 **INTRODUCTION**

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

15 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

25 4. PLAINTIFF resides in Alameda County, in the State of California. PLAINTIFF
26 worked for DEFENDANTS in the State of California as a non-exempt employee during the relevant
27 period.

28 5. DEFENDANT CPC LOGISTICS SOLUTIONS, LLC, and DEFENDANT CPC

1 LOGISTICS INC. (collectively referred to herein as “CPC LOGISTICS”) are each either a Missouri
2 limited liability company and/or Missouri corporation that at all relevant times, were authorized to
3 do business within the State of California and are doing business within the State of California. CPC
4 LOGISTICS and their managing agents own, operate, or otherwise manage a staffing company that
5 supplies workers to logistics/distribution companies, including but not limited to, DEFENDANT
6 NEWCO DISTRIBUTORS, INC.

7 6. DEFENDANT NEWCO DISTRIBUTORS, INC. (referred to herein as “NEWCO
8 DISTRIBUTORS”), is a California corporation, that at all relevant times was authorized to do
9 business within the State of California and is doing business within the State of California.
10 DEFENDANTS and their managing agents, own, operate or otherwise manage a petfood
11 distribution company.

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

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

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

11. In particular, PLAINTIFF is informed and believes, and thereon alleges that at all relevant times DEFENDANT CPC LOGISTICS SOLUTIONS, LLC, and DEFENDANT CPC LOGISTICS INC. operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. For example, DEFENDANT CPC LOGISTICS SOLUTIONS, LLC, and DEFENDANT CPC LOGISTICS INC., maintain the same headquarters/principal office in Chesterfield, Missouri (14528 S. Outer 40 Rd., Ste. 210, Chesterfield, Missouri 63017 and have the same California registered corporate Agent for Service of Process. Based on information and belief, DEFENDANT CPC LOGISTICS SOLUTIONS, LLC, and DEFENDANT CPC LOGISTICS INC. utilize the same policies and procedures for all California employees, including issuing the same employee handbooks and other form agreements.

1 Based on information and belief, DEFENDANT CPC LOGISTICS SOLUTIONS, LLC, and
2 DEFENDANT CPC LOGISTICS INC. also use at least some of the same Human Resources
3 personnel and attorneys to oversee employment matters. As a result, DEFENDANT CPC
4 LOGISTICS SOLUTIONS, LLC, and DEFENDANT CPC LOGISTICS INC. utilized the same
5 unlawful wage and hour policies and practices and across all their California locations/facilities and
6 subjected all the Aggrieved Employees to these same policies and practices regardless of the
7 location(s) or facilities where they worked in California.

8 12. Moreover, CPC LOGISTICS hired PLAINTIFF and entered into a written
9 employment agreement with PLAINTIFF. During PLAINTIFF's employment, CPC LOGISTICS
10 maintained control over many aspects of PLAINTIFF's employment, including, among other things,
11 having the authority to discipline PLAINTIFF, change PLAINTIFF's job assignment, change
12 PLAINTIFF's work hours, change PLAINTIFF's rates of pay, and to terminate PLAINTIFF's
13 employment.

14 13. In addition, when PLAINTIFF was first hired, CPC LOGISTICS provided
15 PLAINTIFF with orientation and training materials. CPC LOGISTICS issued PLAINTIFF written
16 policies concerning meal periods, rest breaks, timekeeping, hours worked, and payment of
17 PLAINTIFF's wages, with which PLAINTIFF was required to comply. Based on information and
18 belief, among other things, these policies provided that PLAINTIFF's weekly time records be
19 submitted to CPC LOGISTICS; and CPC LOGISTICS was supposed to process PLAINTIFF's time
20 records and pay PLAINTIFF for all hours worked. CPC LOGISTICS exercised ultimate control
21 over the payment of PLAINTIFF's wages, as CPC LOGISTICS issued PLAINTIFF his paychecks.
22 Finally, CPC LOGISTICS directed PLAINTIFF to comply with NEWCO DISTRIBUTORS's
23 policies and directions. PLAINTIFF is informed and believes that CPC LOGISTICS exercised the
24 same control over, applied the same policies and practices, and engaged in the same acts and
25 omissions with regard to the other class members.

26 14. NEWCO DISTRIBUTORS similarly suffered or permitted PLAINTIFF to work for
27 them or engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that NEWCO
28 DISTRIBUTORS entered into a written agreement with CPC LOGISTICS, pursuant to which

1 NEWCO DISTRIBUTORS paid CPC LOGISTICS to provide it with workers, including
2 PLAINTIFF, to conduct NEWCO DISTRIBUTORS's business operations – namely, to work in
3 NEWCO DISTRIBUTORS's warehouses/distribution centers. NEWCO DISTRIBUTORS suffered
4 or permitted PLAINTIFF to work at NEWCO DISTRIBUTORS and for the entirety of
5 PLAINTIFF's employment.

6 15. NEWCO DISTRIBUTORS further exercised control over PLAINTIFF's wages,
7 hours and working conditions. NEWCO DISTRIBUTORS also: (1) set PLAINTIFF's work hours
8 and provided PLAINTIFF with PLAINTIFF's work schedule; (2) provided PLAINTIFF with
9 policies regarding meal periods and rest breaks, with which PLAINTIFF was required to comply;
10 (3) directly supervised PLAINTIFF's work through its employees; (4) assigned PLAINTIFF job
11 duties and trained PLAINTIFF on said job duties; (5) exercised authority to reprimand and counsel
12 PLAINTIFF regarding any work performance and other issues; (6) exercised authority to end
13 PLAINTIFF's work assignment at any time, which essentially equated to a termination of
14 employment as PLAINTIFF was not guaranteed any other job assignments; (7) required
15 PLAINTIFF to use its timekeeping system for purposes of recording time worked; (8) determined
16 whether and when PLAINTIFF would receive meal periods and rest breaks; (9) subjected
17 PLAINTIFF to unlawful schedules for taking meal periods and rest breaks; and, (10) was
18 responsible for recording when PLAINTIFF began and ended work shifts. On information and
19 belief, NEWCO DISTRIBUTORS issued further written policies and practices and guidelines
20 governing PLAINTIFF's working conditions with which PLAINTIFF was required to comply.
21 PLAINTIFF is informed and believes that NEWCO DISTRIBUTORS exercised the same control
22 over, applied the same policies and practices, and engaged in the same acts and omissions with
23 regard to the other class members.

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

1 **NEWCO DISTRIBUTORS' LIABILITY UNDER CALIFORNIA LABOR CODE**

2 **SECTION 2810.3**

3 17. California Labor Code section 2810.3(b)(1) provides that “a client employer shall
4 share with the labor contractor all civil legal responsibility and civil liability for all workers supplied
5 by that labor contractor for . . . the payment of wages.” A “labor contractor” means “an individual
6 or entity that supplies, either with or without a contract, a client employer with workers to perform
7 labor within the client employer’s usual course of business.” Cal. Labor Code § 2810.3(a)(3). A
8 “client employer” is “a business entity, regardless of its form, that obtains or is provided workers to
9 perform labor within its usual course of business from a labor contractor.” Cal. Labor Code §
10 2810.3(a)(1)(A). Client employers do not include a business entity with a workforce of fewer than
11 twenty-five workers or with five or fewer workers provided by a labor contractor or labor contractors
12 to the client employer at any time. Cal. Labor Code § 2810.3(a)(1)(B). “Usual course of business”
13 means “the regular and customary work of a business, performed within or upon the premises or
14 worksite of the client employer.” Cal. Labor Code § 2810.3(a)(6).

15 18. CPC LOGISTICS is a “labor contractor” in that CPC LOGISTICS supplies a client
16 employer, NEWCO DISTRIBUTORS, with workers to perform labor within NEWCO
17 DISTRIBUTORS’S usual course of business, namely, the provision of warehousing and or
18 distribution services.

19 19. NEWCO DISTRIBUTORS is a “client employer” as it obtains or is provided
20 workers to perform labor within its usual course of business from labor contractors, including CPC
21 LOGISTICS. NEWCO DISTRIBUTORS has a workforce of at least twenty-five workers and
22 NEWCO DISTRIBUTORS is supplied with more than five workers from a labor contractor,
23 including, CPC LOGISTICS, at any given time.

24 20. Under California Labor Code section 2810.3, NEWCO DISTRIBUTORS, a client
25 employer, shares with the labor contractors, including CPC LOGISTICS, all civil legal
26 responsibility and civil liability for all workers supplied by that labor contractor for the payment of
27 wages.

28 21. PLAINTIFF complied with Labor Code section 2810.3 by mailing certified a letter

1 outlining the substance of the allegations alleged herein to the "Client Employer," namely NEWCO
2 DISTRIBUTORS, thirty (30) days before filing suit.

3 22. Whenever and wherever reference is made in this complaint to any act or failure to
4 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean
5 the acts and/or failures to act by each Defendant acting individually, jointly and severally.

6 **PAGA ALLEGATIONS**

7 23. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
8 of herself, the State of California and Aggrieved Employees, regarding violations of the California
9 Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

10 (1) All non-exempt workers who were directly employed by CPC Logistics Solutions, LLC
11 and/or CPC Logistics, Inc. regardless of where those non-exempt workers were assigned or staffed
12 to work – in California at any time within one year plus 65 days from filing of the initial Complaint
13 through the present ("PAGA Period")

14 (2) All non-exempt workers who were assigned/staffed to work at Newco Distributors, Inc.
15 by CPC Logistics Solutions, LLC and/or CPC Logistics, Inc. and/or any other staffing/temporary
16 service agencies in California at any time within one year plus 65 days from filing of the initial
17 Complaint through the present ("PAGA Period")

18 (3) All non-exempt workers who were directly employed by Newco Distributors, Inc. in
19 California within one year plus 65 days from filing of the initial Complaint through the present
20 ("PAGA Period")

21 24. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
22 section 2699(c), as she was employed by DEFENDANTS during the applicable statutory limitations
23 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
24 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
25 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
26 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
27 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
28 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th

1 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
2 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

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

4 25. On May 31, 2022, PLAINTIFF BARAJAS, through his counsel, gave written notice
5 by online filing with the California Labor and Workforce Development Agency ("LWDA")
6 informing it that DEFENDANTS failed to comply with California's labor laws with regard to the
7 allegations alleged in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's
8 claims for violations of the California Labor Code and the applicable wage orders on behalf of
9 himself, the State of California and other Aggrieved Employees. The LWDA assigned PLAINTIFF
10 the following case number: LWDA-CM-886540-22. PLAINTIFF, through his counsel, also sent
11 the PAGA Notice to DEFENDANTS via certified mail, on May 31, 2022.

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

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

20 **FACTUAL ALLEGATIONS**

21 28. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
22 employed by DEFENDANTS in the State of California. DEFENDANTS, at all times, exercised
23 control over PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them
24 to work. PLAINTIFF and the Aggrieved Employees worked in various job positions, including but
25 not limited to, equipment operator, shipping and receiving clerk, warehouse worker and/or other
26 similar title(s).

27 29. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during
28 the relevant period. PLAINTIFF worked for DEFENDANTS as an equipment operator, shipping

1 and receiving clerk, warehouse worker and/or other similar title(s). PLAINTIFF worked at NEWCO
2 DISTRIBUTORS's warehouse facility located in Hayward, California, where PLAINTIFF was
3 assigned to work by CPC LOGISTICS during the relevant period, until the separation of his
4 employment, on or about October 25, 2021. PLAINTIFF's job duties included, but were not limited
5 to, picking orders, performing safety checks of equipment, operating a forklift, loading and
6 unloading products, documenting any damaged products, and general warehouse housekeeping
7 duties.

8 30. PLAINTIFF typically worked shifts lasting at least eight (8) to ten (10) hours per
9 day, and at least five (5) days per week.

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

19 32. PLAINTIFF and other Aggrieved Employees were unable to take timely, off duty,
20 thirty-minute, uninterrupted meal periods. For example, at times, PLAINTIFF had his meal period
21 cut short and/or was forced to take his meal period late (i.e. after the fifth hour of work) due to
22 understaffing/lack of relief workers, commentary from supervisors pressuring him to take
23 noncompliant meal periods and/or the nature and constraints of his job duties, including but not
24 limited to, the need to attend to unscheduled deliveries, unexpected will calls and/or complete other
25 work tasks. Based on information and belief, other Aggrieved Employees were also forced to take
26 late, interrupted and/or shortened meal periods due to understaffing, pressure from supervisors to
27 take noncompliant meal breaks and/or the nature and constraints of their job duties/need to keep up
28 with distribution deadlines and/or complete other work tasks.

1 33. Moreover, based on information and belief, Aggrieved Employees were required to
2 remain on the worksite premises and/or were tethered to DEFENDANTS' communication devices
3 during purported meal periods, and thus remained subjected to DEFENDANTS' control during meal
4 periods.

5 34. Based on information and belief, DEFENDANTS implemented a policy and/or
6 practice of automatically deducting at least thirty minutes per shift for short, interrupted and/or
7 otherwise unlawful meal periods, despite having actual and/or constructive knowledge that
8 PLAINTIFF and other Aggrieved Employees did not receive compliant meal periods.

9 35. Based on further information and belief, DEFENDANTS rounded the start and end
10 times of PLAINTIFF and Aggrieved Employees' meal periods resulting in PLAINTIFF and other
11 Aggrieved Employees not being paid for all time worked as well as late or shortened meal periods.

12 36. PLAINTIFF is further informed and believes and thereon alleges that
13 DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-
14 deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF
15 and other Aggrieved Employees, in violation of California's meal period laws.

16 37. Moreover, DEFENDANTS failed to provide a timely, duty-free, uninterrupted,
17 thirty-minute, second meal break to PLAINTIFF and Aggrieved Employees that worked shifts of
18 more than ten hours. DEFENDANTS failed to provide PLAINTIFF and the Aggrieved Employees
19 with a second, timely, duty-free, uninterrupted meal period despite Aggrieved Employees
20 consistently working over ten hours in a workday and thus being entitled to a second duty-free,
21 uninterrupted, thirty-minute meal period before the end of the tenth hour of work. For example, at
22 times, PLAINTIFF worked more than ten hours per shift but was not provided with a second, timely,
23 off-duty, thirty-minute meal period.

24 38. Based on information and belief, DEFENDANTS did not have a lawful written meal
25 break policy, nor did DEFENDANTS have a compliant policy in practice.

26 39. Moreover, DEFENDANTS failed to pay PLAINTIFF and other Aggrieved
27 Employees an additional hour of wages at their respective regular rates of pay for each workday a
28 proper meal period was not provided, as required by California law. For example, as explained

1 above, PLAINTIFF was at times forced to take a late meal period and/or had his meal period
2 interrupted, yet DEFENDANTS' wage statements for PLAINTIFF do not show the payment of a
3 single meal period premium. As such, DEFENDANTS failed to pay a meal period premium at all
4 for each workday a lawful meal period was not provided. Additionally, based on information and
5 belief, if a meal premium was paid, DEFENDANTS failed to pay the proper meal period premium
6 for failure to incorporate all non-discretionary remuneration, including but not limited to, non-
7 discretionary bonus/incentive pay (e.g., attendance bonuses, safety bonuses and/or other non-
8 discretionary performance-based bonuses), shift differential pay, and/or other non-discretionary
9 compensation into the regular rate for purposes of calculating the owed meal period premium at the
10 correct regular rate of compensation.

11 40. **Rest periods.** DEFENDANTS did not properly authorize and provide PLAINTIFF
12 and other Aggrieved Employees with off-duty, uninterrupted, net ten-minute rest periods for every
13 four (4) hours worked or major fraction thereof.

14 41. PLAINTIFF and other Aggrieved Employees were not adequately informed,
15 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
16 law. Per DEFENDANTS' unlawful rest period policy and practice, PLAINTIFF often worked at
17 least ten hours per day but was not provided with a single compliant rest period in a shift. Rest
18 breaks were at times on duty, interrupted, worked through, and/or untimely. For example, at times,
19 PLAINTIFF was forced to work through his rest breaks due to understaffing, his workload and/or
20 pressure from his supervisor to work through breaks to keep up with delivery schedules/warehouse
21 deadlines and or complete other work tasks.

22 42. Moreover, based on information and belief, PLAINTIFF and other Aggrieved
23 Employees were required to remain on the worksite premises and/or remained tethered to
24 DEFENDANTS' communication devices during purported rest periods and were thus subjected to
25 DEFENDANTS' control. As such, DEFENDANTS failed to provide Aggrieved Employees with
26 ten-minute uninterrupted rest periods in compliance with California law. Based on information and
27 belief, DEFENDANTS did not have a lawful policy, instruction, or practice as to the taking, length,
28 timing, or duty-free nature of rest periods. For example, based on information and belief,

1 DEFENDANTS failed to authorize and permit rest periods that were a “net” ten minutes in a suitable
2 rest area and instead limited PLAINTIFF and other Aggrieved Employees to only ten-minute rest
3 periods, requiring them to be back at their workstations within ten minutes of leaving, in violation
4 of California rest period law. Despite not providing lawful rest periods, DEFENDANTS failed to
5 pay PLAINTIFF and other Aggrieved Employees with an additional hour of pay at PLAINTIFF’s
6 and other Aggrieved Employees’ regular rates of compensation for each missed, or otherwise
7 unlawful rest period. Based on information and belief, DEFENDANTS failed to pay a rest period
8 premium at all for each workday a lawful rest period was not provided. If and when a rest premium
9 was paid, DEFENDANTS failed to pay the proper premium for failure to incorporate all non-
10 discretionary remuneration, including but not limited to, non-discretionary bonus pay, shift
11 differential pay, and/or other non-discretionary compensation into the regular rate for purposes of
12 calculating the owed rest period premium at the correct regular rate of compensation.

13 43. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate all
14 hours worked, including all owed minimum wages and overtime wages, including double time
15 wages. As explained above, PLAINTIFF and the Aggrieved Employees were consistently required
16 to perform off-the-clock work by virtue of DEFENDANTS’ automatic-deduction and/or rounding
17 policies and practices for meal periods. On information and belief, the work time reported by the
18 Aggrieved Employees was rounded and automatically deducted for at least 30 minutes of wages
19 every day they worked for DEFENDANTS for meal periods that were short, not taken, interrupted,
20 or during which PLAINTIFF and the Aggrieved Employees were not relieved of all duties or
21 employer control and/or were otherwise unlawful.

22 44. Additionally, PLAINTIFF alleges on information and belief that DEFENDANTS
23 implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other
24 Aggrieved Employees of compensable time because the time-rounding system implemented by
25 DEFENDANTS would almost always, if not always, result in understating actual work time. For
26 example, wage statements issued by DEFENDANTS show DEFENDANTS rounded PLAINTIFF’s
27 total hours worked to at least the nearest quarter hour during various pay periods. Based on
28 information and belief, DEFENDANTS rounded down PLAINTIFF’s total hours worked on all

1 wage statements. PLAINTIFF estimates DEFENDANTS shaved off an average of at least thirty
2 minutes of compensable work time each week he worked for DEFENDANTS due to
3 DEFENDANTS' time-rounding policies and practices, payment according to scheduled hours rather
4 than actual hours worked and/or other mandated off-the-clock work described herein. Based on
5 information and belief, DEFENDANTS implemented a "grace period" for Aggrieved Employees to
6 clock in and clock out for their shifts that assumed that Aggrieved Employees worked only during
7 their scheduled shift times and failed to account for and compensate for actual time worked,
8 resulting in the underpayment of minimum and overtime wages owed to Aggrieved Employees.
9 DEFENDANTS' failure to pay for all time worked by virtue of its time-rounding practices and/or
10 only paying for scheduled hours rather than for actual time worked resulted in the underpayment of
11 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
12 for PLAINTIFF and those Aggrieved Employees who worked more than eight (8) hours in a day
13 and/or forty hours in a week.

14 45. Moreover, based on information and belief, PLAINTIFF and other Aggrieved
15 Employees were consistently required to perform pre-shift and/or post-shift off-the-clock work. For
16 example, PLAINTIFF typically had to arrive at work at least several minutes prior to his scheduled
17 shift start time each workday to account for the usual wait time in line behind other employees to
18 clock in, don safety and/or personal protective equipment DEFENDANTS required and/or perform
19 other mandated pre-shift off-the-clock work such as, but not limited to, performing safety checks of
20 equipment and/or complete other work tasks. However, PLAINTIFF was not compensated for this
21 pre-shift off-the-clock work time spent under employer control fulfilling DEFENDANTS'
22 requirements, resulting in significant off-the-clock work and the underpayment of minimum and
23 overtime wages owed to PLAINTIFF. Based on information and belief, DEFENDANTS had a
24 uniform policy and practice of requiring the Aggrieved Employees to complete off-the-clock work
25 tasks before clocking in for the start of their shifts, resulting in significant off-the-clock work and
26 the underpayment of minimum and overtime wages owed to the Aggrieved Employees.

27 46. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
28 required to complete other off-the-clock work tasks after clocking out for the end of their shifts

1 and/or during uncompensated meal periods, resulting in significant off-the-clock work and the
2 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
3 Employees.

4 47. Based on information and belief, DEFENDANTS did not compensate PLAINTIFF
5 and other Aggrieved Employees for time spent donning and doffing personal protective equipment,
6 safety equipment and/or uniforms (e.g., face masks, safety harnesses and/or safety goggles) during
7 meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled
8 shift.

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

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

27 50. In addition, on information and belief, DEFENDANTS required Aggrieved
28 Employees to obtain Covid-related testing outside of their scheduled shift times without

1 compensating them for the time spent completing DEFENDANTS' testing requirements.

2 51. Based on further information and belief, DEFENDANTS also failed to pay the
3 correct overtime and double time rates to Aggrieved Employees due to DEFENDANTS' failure to
4 incorporate all forms of non-discretionary compensation, including but not limited to, shift
5 differential pay and/or non-discretionary bonus pay and/or other forms of non-discretionary pay,
6 into the regular rate(s) of pay for purposes of calculating the owed overtime rate and the owed double
7 time rate resulting in the underpayment of overtime and double time wages owed. For example,
8 based on information and belief, Aggrieved Employees regularly earned shift differential pay and/or
9 earned non-discretionary bonuses (e.g., attendance bonuses, safety bonuses and/or other non-
10 discretionary performance-based bonuses). Based on information and belief, DEFENDANTS failed
11 to factor Aggrieved Employees' non-discretionary compensation into their regular rate(s) of pay for
12 purposes of calculating the owed overtime rate and the owed double time rate. Based on information
13 and belief, DEFENDANTS failed to incorporate all non-discretionary compensation into the regular
14 rate of pay for purposes of paying overtime and double time wages to Aggrieved Employees.

15 52. DEFENDANTS' automatic deduction and rounding policies and practices as well as
16 mandated off-the-clock work described herein resulted in a failure to account for all hours worked
17 and deprived PLAINTIFF and Aggrieved Employees of all owed minimum wages and overtime
18 wages, including, but not limited to, double time wages. Based on information and belief,
19 DEFENDANTS had actual and/or constructive knowledge that its auto-deduction and time-
20 rounding policies, failure to provide full 30-minute off-duty meal periods, and off-the-clock work
21 policies and practices resulted in violations of California's minimum and overtime wage laws and
22 other violations described below.

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

1 but not limited to when shift differentials were paid). Accordingly, DEFENDANTS violated Labor
2 Code section 226 by providing wage statements that were inaccurate and failed to include all of the
3 statutorily required information.

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

12 55. In addition, based on information and belief, DEFENDANTS violated Labor Code
13 section 226 by issuing wage statements to Aggrieved Employees that failed to list all applicable
14 hourly rates in effect during the pay period, due to, including but not limited to, failing to list the
15 correct overtime rate because DEFENDANTS did not incorporate all non-discretionary
16 compensation, such as, but not limited to, shift differential pay and/or non-discretionary
17 bonuses/incentive pay into the regular pay rate for purposes of calculating the owed overtime rate.

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

24 57. **Failure to Reimburse Business Expenses.** DEFENDANTS also failed to
25 compensate PLAINTIFF and the Aggrieved Employees for business-related expenses incurred in
26 direct consequence of the discharge of their duties or of their obedience to the directions of the
27 employer. PLAINTIFF and the Aggrieved Employees were improperly required to provide and
28 maintain work tools that are supposed to be the responsibility of the employer. DEFENDANTS

1 shifted its costs of doing business onto PLAINTIFF and other Aggrieved Employees by requiring
2 them to pay for its business expenses, including but not limited to, use of PLAINTIFF's and
3 Aggrieved Employees' personal mobile phone/mobile device and costs associated with the purchase
4 and/or maintenance of work uniforms/clothing and protective gear. For example, at times,
5 PLAINTIFF received work-related calls and messages to his personal phone from managers and/or
6 supervisors, including but not limited to, regarding scheduling/other work tasks, and purchased his
7 own face masks. PLAINTIFF was not reimbursed for these business expenses. Moreover, based on
8 information and belief, Aggrieved Employees were not reimbursed for the cost of undergoing Covid
9 testing, including but not limited to purchasing the test, and/or the cost of traveling and/or using a
10 personal vehicle to travel to and from a testing site.

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

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

1 amount or balance left for the Aggrieved Employees by failing to provide Aggrieved Employees
2 with a wage statement or separate writing showing the balance of accrued or available sick leave,
3 or paid time off leave provided in lieu of sick leave, on their designated pay dates with the their
4 payment of wages, as required under Labor Code section 246, and thus affected Aggrieved
5 Employees' intelligent exercise of their paid sick leave. But for this failure, Aggrieved Employees
6 who are no longer employed with DEFENDANTS would have used their paid sick leave at least
7 prior to their respective separations, or on several occasions after receiving notice of the available
8 sick leave.

9 **60. Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
10 EMPLOYER had and continues to have a uniform policy and practice of failing to allow Aggrieved
11 Employees to use their earned vacation/paid time off during their employment and/or failing to pay
12 all vested, accrued paid time off to Aggrieved Employees upon separation of employment, in
13 violation of California law, including but not limited to, Labor Code section 227.3.

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

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

28 **63.** Additionally, DEFENDANTS failed and continue to fail to keep accurate records

1 and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and
2 Aggrieved Employees.

3 **64. 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 **65.** Therefore, DEFENDANTS' violations with respect to, including but not limited to,
9 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and
10 unreimbursed business expenses result in separate violations of sections 1198 and 1199.

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

16 **67. Unlawful Deductions.** Labor Code section 221 prohibits an employer from
17 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
18 to said employee.” Based on information and belief, DEFENDANTS made unlawful deductions
19 from Aggrieved Employees’ paychecks during the relevant period, including but not limited to
20 deducting costs advanced by DEFENDANTS from Aggrieved Employees’ final paychecks as well
21 as deductions for purported overpayments from prior pay periods and/or deductions for negligently
22 broken/damaged company property. Such a practice is in violation of including but not limited to,
23 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
24 Section 2699.

25 **68. Statutory Wage Violations.** As described above, DEFENDANTS willfully and
26 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
27 for all hours worked which resulted in the payment of less than the statutorily required wages owed
28 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but

1 not limited to, overtime wages and minimum wages, to which they were entitled to under California
2 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
3 Aggrieved Employees lower wages than those they were entitled to while purporting that
4 PLAINTIFF and other Aggrieved Employees were properly paid.

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

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

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

28 **72.** Section (b) of Labor Code section 226 further requires employers to "afford current

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

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

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

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

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

8 **FIRST CAUSE OF ACTION**

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

10 **2698, ET SEQ.**

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

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

14 77. **Meal Period Violations.** California law requires employers to provide employees a
15 duty-free, uninterrupted, thirty-minute meal period when an employee works more than five (5)
16 hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab.
17 Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant*
18 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Upon information and belief, PLAINTIFF did not
19 sign a valid meal period waiver throughout PLAINTIFF’s employment by DEFENDANTS.

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

28 79. Employers covered by any and all applicable IWC Wage Orders have an obligation

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

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

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

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

27 83. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
28 periods in violation of California law or failed to pay the proper meal period premium for failure to

1 incorporate all non-discretionary remuneration including but not limited to, non-discretionary
2 bonuses/incentive pay and/or shift differential pay and/or other non-discretionary compensation into
3 the regular rate of compensation for purposes of calculating the owed meal period premium.

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

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

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

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

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

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

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

26 91. PLAINTIFF and other Aggrieved Employees were non-exempt employees who
27 regularly worked time for which they were not compensated, resulting in unpaid minimum wages
28 as well as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)

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

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

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

27 94. **Wage Statement Violations.** California law requires every employer semi-monthly
28 or at the time of each payment of wages to furnish its employees with an accurate itemized wage

1 statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by
2 the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee
3 is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the
4 period for which the employee is paid; (7) the name of the employee and only the last four digits of
5 his or her social security number or an employee identification number other than a social security
6 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
7 hourly rates in effect during the pay period and the corresponding number of hours worked at each
8 hourly rate. Lab. Code section 226.

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

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

28 97. DEFENDANTS' failure to accurately list, including but not limited to, all hours

1 worked on all wage statements caused confusion to PLAINTIFF and caused and continues to cause
2 confusion to other Aggrieved Employees over whether they received all wages owed to them.

3 98. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
4 they could not easily determine whether they received all wages owed to them and whether they
5 were paid for all hours worked.

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

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

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

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

26 103. But for this failure, PLAINTIFF and other Aggrieved Employees would have
27 used their paid sick leave at least prior to their respective separations, for as on several

28

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

1 occasions thereafter, he or she would have been entitled to use the banked sick leave and earn
2 appropriate compensation.

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

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

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

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

16 108. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA,
17 including but not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as
18 permitted by law.

19 109. **Failure to Pay Vested Vacation/Paid Time Off:** California Labor Code section
20 227.3 provides that when an employer policy provides for paid vacations and/or paid time off,
21 and an employee is terminated without having taken off his, her, or their vested vacation time,
22 all vested vacation shall be paid to the employee as wages at the employee's final rate in
23 accordance with such contract of employment or employer policy respecting eligibility or time
24 served and that there shall be no forfeiture of vested vacation time or paid time off upon
25 termination. Based on information and belief, DEFENDANTS had and continue to have a
26 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
27 vacation/paid time off during their employment and/or failing to pay all vested, accrued paid
28 time off to Aggrieved Employees upon separation of employment, in violation of California

1 law, including but not limited to, Labor Code section 227.3.

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

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

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

13 112. At all relevant times, PLAINTIFF and other Aggrieved Employees were
14 improperly required to provide and maintain work tools that are supposed to be the
15 responsibility of the employer, including but not limited to, use of personal cell phone and/or
16 data plan charges and/or costs associated with the purchase and/or maintenance of
17 uniforms/work clothing and shoes and/or personal protective equipment and/or safety gear.
18 Moreover, based on information and belief, Aggrieved Employees were not reimbursed for the cost
19 of undergoing Covid testing, including but not limited to purchasing the test, and/or the cost of
20 traveling and/or using a personal vehicle to travel to and from a testing site.

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

27 114. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
28 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by

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

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

15 **116. Unlawful Deductions.** Labor Code section 221 prohibits an employer from
16 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
17 to said employee." Based on information and belief, DEFENDANTS made unlawful deductions
18 from Aggrieved Employees' paychecks during the relevant period, including but not limited to
19 deducting costs advanced by DEFENDANTS from Aggrieved Employees' final paychecks as well
20 as deductions for purported overpayments from prior pay periods and/or deductions for negligently
21 broken/damaged company property. Such a practice is in violation of including but not limited to,
22 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
23 Section 2699.

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

1 deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages,
2 to which they were entitled to under California law.

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

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

23 **120. Background Check Violations/Unlawful Agreements/Unlawful Inquiries into**
24 **Criminal History.** Labor Code section 432.5 provides that "no employer...shall require any
25 employee or applicant for employment to agree, in writing, to any term or condition which is known
26 by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS
27 required PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of
28 employment, such as, but not limited to, unlawful criminal and/or financial checks as a condition of

1 obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

28 122. Labor Code section 432.7 prohibits an employer from asking applicants about past

1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, DEFENDANTS asked PLAINTIFF and Aggrieved Employees about arrests
3 not resulting in convictions on its employment application, in violation of California law

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

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

14 125. These violations subject DEFENDANTS to civil penalties under the Labor Code,
15 including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each
16 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
17 civil penalty.

18 126. Under the provisions of PAGA and the above-mentioned Labor Code sections,
19 including but not limited to, Labor Code sections 201, 202, 203, 210, 216, 223, 225.5, 226, 226.3,
20 226.7, 227.3, 245-248.5, 256, 432, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1024.5, 1174, 1194,
21 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as
22 well as all interpretations of these laws by California Courts and administrative bodies, as well as
23 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
24 penalties:

- 25 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
26 relevant California Labor Code provisions listed herein only if permitted by the
27 PAGA statute, pursuant to Labor Code section 2699(a); and
28 b. Default PAGA penalties for any violation of the enumerated list of Labor Code

1 violations without a civil penalty recoverable under the PAGA, all in the default
2 amounts provided by Labor Code section 2699(f).

3 c. The proper measure of penalties under PAGA is the number of violations,
4 whether those violations were committed as against Plaintiff or any Aggrieved
5 Employee, whether a party to this action or not.

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

8
9 **PRAYER FOR RELIEF**

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

- 12 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
13 25% payable to Aggrieved Employees);
14 2. For reasonable attorney's fees and costs of suit; and
15 3. For such other and further relief that the Court deems just and proper.

16
17 Dated: August 17, 2022

CROSNER LEGAL, PC

18
19 By: 
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