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9 Attorneys for Plaintiff CRISTINA CATALANO,
on behalf of herself, the State of California, and others similarly
10 situated and aggrieved

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**
13

22STCV26949

14 CRISTINA CATALANO, on behalf of
15 herself, the State of California, and others
similarly situated and aggrieved,

16 Plaintiff,

17
18 v.

19 BEVERLY HILLS HOTEL
20 MANAGEMENT LLC, a Delaware limited
liability company; MR. C MANAGER, LLC,
21 a New York limited liability company; BHR
TRS BEVERLY HILLS LLC, a Delaware
22 limited liability company; BRAEMAR
HOTELS & RESORTS, INC., a Maryland
23 corporation; REMINGTON LODGING &
HOSPITALITY, LLC, a Delaware limited
24 liability company; ASHFORD TRS
BEVERLY HILLS LLC, a Delaware limited
25 liability company; and DOES 1-100,
inclusive,

26 Defendants.
27
28

Case No.:

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

1 Plaintiff, CRISTINA CATALANO (“PLAINTIFF”), as an individual on behalf of herself,
2 the State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants BEVERLY HILLS HOTEL MANAGEMENT LLC, a Delaware
4 limited liability company; MR. C MANAGER, LLC, a New York limited liability company; BHR
5 TRS BEVERLY HILLS LLC, a Delaware limited liability company; BRAEMAR HOTELS &
6 RESORTS, INC., a Maryland corporation; REMINGTON LODGING & HOSPITALITY, LLC, a
7 Delaware limited liability company; ASHFORD TRS BEVERLY HILLS LLC, a Delaware limited
8 liability company; and DOES 1-100, inclusive, (collectively referred to herein as
9 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

10 **INTRODUCTION**

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

17 **JURISDICTION AND VENUE**

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

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

27 **THE PARTIES**

28 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of

1 California and a citizen of the State of California who worked as a non-exempt employee for
2 DEFENDANTS in the State of California.

3 5. PLAINTIFF was employed by DEFENDANTS as a non-exempt server (and/or
4 similar position/title) at DEFENDANTS' restaurant located in the Mr. C Beverly Hills hotel in Los
5 Angeles, California. PLAINTIFF was employed by DEFENDANTS from in or around April 2019
6 through in or around December 2021.

7 6. Defendant, BEVERLY HILLS HOTEL MANAGEMENT LLC, is a Delaware
8 limited liability company that, at all relevant times, was authorized to do business within the State
9 of California and is doing business in the State of California.

10 7. Defendant, MR. C MANAGER, LLC, is a New York limited liability company that,
11 at all relevant times, was authorized to do business within the State of California and is doing
12 business in the State of California.

13 8. Defendant BHR TRS BEVERLY HILLS LLC, is a Delaware limited liability
14 company that, at all relevant times, was authorized to do business within the State of California and
15 is doing business in the State of California.

16 9. Defendant BRAEMAR HOTELS & RESORTS, INC., is a Maryland corporation
17 that, at all relevant times, was authorized to do business within the State of California and is doing
18 business in the State of California.

19 10. Defendant REMINGTON LODGING & HOSPITALITY, LLC, is a Delaware
20 limited liability company that, at all relevant times, was authorized to do business within the State
21 of California and is doing business in the State of California.

22 11. Defendant ASHFORD TRS BEVERLY HILLS LLC, is a Delaware limited liability
23 company that, at all relevant times, was authorized to do business within the State of California and
24 is doing business in the State of California.

25 12. DEFENDANTS own, operate, or otherwise manage hotels in California including but
26 not limited to Mr. C Beverly Hills hotel.¹

27 13. The true names and capacities of the DOE Defendants sued herein as DOES 1

28 ¹ See <https://www.mrchotels.com/mrcbeverlyhills/>. Last visited on August 14, 2022.

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

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

16 **JOINT LIABILITY**

17 15. Under California law, the definition of the terms “to employ” are broadly construed
18 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
19 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
20 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
21 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
22 was to reach situations in which multiple entities control different aspects of the employment
23 relationship. Supervision of the work, in the specific sense of exercising control over how services
24 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
25 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
26 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
27 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
28 California, applying a less stringent standard to what constitutes sufficient control by a business

1 over its vendor's employees' wages and working conditions to render that business liable as a joint
2 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); "[i]f the putative
3 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
4 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
5 employment," *Id.* at 875 [emphasis added].

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

13 17. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
14 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
15 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
16 across all of their locations/facilities and subjected Aggrieved Employees to these same policies and
17 practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
18 informed and believes that: (1) there is common ownership in, and financial control, in
19 DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
20 over the day-to-day operations and employment matters, including the power to hire and fire, set
21 schedules, issue employee policies, and determine rates of compensation across its locations in
22 California; (3) DEFENDANTS utilize the same policies and procedures for all California
23 employees, including issuing the same employee handbooks and other form agreements; (4)
24 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
25 employment matters; and, (6) DEFENDANTS share employees.

26 18. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
27 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
28 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that

1 DEFENDANTS, exercised sufficient control over their wages, hours and working conditions, and/or
2 suffered or permitted them to work so as to be considered their joint employers. For example, during
3 her employment, PLAINTIFF received wage statements identifying Defendant BEVERLY HILLS
4 HOTEL MANAGEMENT LLC as the employer, and other wage statements identifying Defendant
5 BHR TRS BEVERLY HILLS LLC as the employer. PLAINTIFF also received wage statements
6 that stated the following: "Employing Entity: Beverly Hills Marriott 150 South Beverly Drive, Los
7 Angeles, CA 90035." Based on information and belief, the Beverly Hills Marriott is owned,
8 managed, and/or operated by Defendant REMINGTON LODGING & HOSPITALITY, LLC,²
9 and/or ASHFORD TRS BEVERLY HILLS LLC.³ Moreover, documents in PLAINTIFF's
10 personnel file identify Defendant MR. C MANAGER, LLC as the employer. Based on information
11 and belief, at times during the relevant period, Mr. C Beverly Hills hotel was owned, managed
12 and/or operated by Defendant REMINGTON LODGING & HOSPITALITY, LLC.⁴ Furthermore,
13 documents in PLAINTIFF's personnel file, including but not limited to an employee handbook
14 identify "Remington" as the employer. Upon information and belief, Defendant BRAEMAR
15 HOTELS & RESORTS, INC., acquired the Mr. C Beverly Hills hotel at some time during the
16 relevant period.⁵

17 19. As such, PLAINTIFF alleges upon information and belief, that DEFENDANTS
18 created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and
19 overtime pay, time-keeping practices, meal and rest periods, reimbursement of business expenses
20 and other working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
21 Employees and further that DEFENDANTS uniformly compensated and controlled their wages in
22 a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and Aggrieved
23 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
24 collectively retained the right to terminate their employment with or without cause. Upon
25 information and belief, DEFENDANTS further collectively represented to PLAINTIFF and

26 ² See <https://www.remingtonhotels.com/portfolio>. Last visited on August 14, 2022.

27 ³ See <https://www.ahtreit.com/portfolio.htm>. Last visited on August 14, 2022.

28 ⁴ See <https://www.remingtonhotels.com/portfolio>. Last visited on August 14, 2022.

⁵ See <https://www.bhrrreit.com/>. Last visited on August 14, 2022.

1 Aggrieved Employees in writing the details of their compensation, and the manner in which they
2 were to take meal and rest periods, the procedures required by DEFENDANTS collectively for
3 recordation of hours worked and the policies applicable to PLAINTIFF and Aggrieved Employees
4 by which DEFENDANTS collectively would evaluate their wage rates.

5 20. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
6 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
7 collectively held the right to control virtually every aspect their employment, including the
8 instrumentality that resulted in the illegal conduct for which PLAINTIFF seeks relief in this
9 Complaint.

10 21. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
11 control over, applied the same policies and practices, and engaged in the same acts and omissions
12 with regard to Aggrieved Employees.

13 PAGA ALLEGATIONS

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

18 All current and former non-exempt employees that worked either
19 directly or via a staffing agency for DEFENDANTS at any location
20 in California at any time from one year and sixty-five days prior to
21 the filing of the initial complaint through the present ("PAGA
22 Period").

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

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

5 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

6 24. On May 27, 2022, PLAINTIFF, through her counsel, gave written notice by online
7 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
8 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
9 in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and correct copy of
10 PLAINTIFF’s PAGA Letter. On June 1, 2022, PLAINTIFF, through her counsel, gave written
11 amended notice by online filing with the LWDA (“Amended PAGA Letter”), naming additional
12 entities that employed PLAINTIFF. Attached hereto as **Exhibit 2** is true and correct copy of
13 PLAINTIFF’s Amended PAGA Letter. The PAGA Letter and Amended PAGA Letter were sent to
14 DEFENDANTS via certified mail.

15 25. The PAGA Letter and Amended PAGA Letter outlined PLAINTIFF’s claims for
16 violations of the California Labor Code and the applicable wage orders on behalf of herself, the
17 State of California and other Aggrieved Employees.

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

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

26 **FACTUAL AND LEGAL ALLEGATIONS**

27 28. During the relevant period, PLAINTIFF, and Aggrieved Employees worked for
28 DEFENDANTS in the State of California. At all times referenced herein, DEFENDANTS exercised

1 control over PLAINTIFF and Aggrieved Employees, and suffered and/or permitted them to work.

2 29. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
3 PLAINTIFF worked for DEFENDANTS as a server (and/or similar position/title) at the restaurant
4 located in DEFENDANTS' Mr. C Beverly Hills hotel in Los Angeles, California. PLAINTIFF
5 worked for DEFENDANTS from in or about April 2019 through in or around December 2021.

6 30. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
7 hourly basis for time counted by DEFENDANTS as hours worked.

8 31. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
9 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
10 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
11 Employees for all hours worked by virtue of, including but not limited to, DEFENDANTS' time
12 rounding policies and practices, automatic deduction for purported meal periods (and/or failure to
13 relieve employees of all duties/employer control during unpaid meal periods, short meal periods, or
14 otherwise unlawful meal period practices). Based on information and belief, DEFENDANTS
15 implemented a policy and/or practice of rounding meal period start and end times and/or
16 automatically deducting at least thirty minutes per shift for meal periods, despite having actual
17 and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees were not afforded
18 lawful meal periods, depriving PLAINTIFF and Aggrieved Employees of all wages owed.

19 32. Based on information and belief, PLAINTIFF and Aggrieved Employees were not
20 paid for all hours worked due to DEFENDANTS' mandated off-the-clock work policies and
21 practices, including but not limited to pre-shift and post-shift off-the-clock work. For example, prior
22 to clocking in for a scheduled shift, PLAINTIFF and other Aggrieved Employees were required to
23 undergo pre-shift temperature screenings that took at least two to three minutes to complete. This
24 work time was off-the-clock and uncompensated.

25 33. DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to don
26 and doff their work uniform prior to clocking in to work. Upon arriving at the hotel (and after
27 completing the pre-shift temperature screening), PLAINTIFF was required to go to the locker room
28 and pick up her uniform. PLAINTIFF then walked to the nearest restroom to change into her uniform

1 (DEFENDANTS' locker room did not have changing rooms). After changing into her uniform,
2 PLAINTIFF returned to the locker room to place her belongings in her locker. This process, which
3 took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

4 34. Similarly, after completing a scheduled shift, PLAINTIFF was required to clock out
5 first, then go to the locker room to retrieve her belongings. She then walked to the nearest restroom
6 to change out of her uniform. After changing, PLAINTIFF either returned her uniform to her locker,
7 or left her uniform in the laundry department. If and when PLAINTIFF left her uniform in the
8 laundry department, PLAINTIFF was required to fill out paperwork in the laundry department. This
9 process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

10 35. Additionally, PLAINTIFF was occasionally required to attend meetings with
11 DEFENDANTS' human resources department after clocking out of a scheduled shift. For example,
12 if a customer or guest complained at the restaurant, and/or there was a disciplinary matter or policy
13 that needed to be addressed, human resources asked to speak to PLAINTIFF and other Aggrieved
14 Employees after clocking out of a scheduled shift. As a result, meetings with human resources were
15 off-the-clock and uncompensated. PLAINTIFF recalls attending a post-shift off-the-clock meeting
16 with human resources that lasted approximately one hour.

17 36. Moreover, based on information and belief, PLAINTIFF completed off-the-clock
18 work due to DEFENDANTS' policy and/or practice of paying for scheduled hours worked rather
19 than actual hours worked. For example, in addition to using a time clock, PLAINTIFF was required
20 to fill out a daily time sheet at the restaurant. PLAINTIFF's manager required that Aggrieved
21 Employees write down their scheduled shift start time, and shift end time as opposed to their actual
22 start and end time. As a result, PLAINTIFF regularly wrote down her scheduled shift end time even
23 though her actual shift end time was much later (due to her need to assist customers, clean up after
24 customers and/or complete other work tasks). Based on information and belief, PLAINTIFF was
25 paid for the hours notated on the daily time sheet as opposed to the hours recorded by the time clock
26 machine, further resulting in unpaid hours worked.

27 37. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding
28 policies and practices, auto-deduction policies and practices for purported meal periods, failure to

1 provide lawful meal periods, and/or other off-the-clock work practices and policies/failure to pay
2 for all hours worked resulted in the underpayment of minimum wages as well as unpaid overtime
3 wages owed to PLAINTIFF and Aggrieved Employees that worked more than eight (8) hours in a
4 day and/or more than forty (40) hours in a week.

5 38. Based on information and belief, DEFENDANTS failed and continue to fail to pay
6 premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours
7 in a week.

8 39. Based on information and belief, DEFENDANTS failed and continue to fail to pay
9 twice Aggrieved Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per
10 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
11 work week, in violation of California's overtime laws.

12 40. Moreover, based on information and belief, DEFENDANTS failed to incorporate all
13 non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay,
14 and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime
15 rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF
16 and other Aggrieved Employees.

17 41. Based on information and belief, DEFENDANTS had actual and/or constructive
18 knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure
19 to provide lawful meal periods and/or other off-the-clock work policies and practices resulted in the
20 underpayment of minimum wages and overtime wages owed to PLAINTIFF and Aggrieved
21 Employees.

22 42. **Meal Period Violations.** PLAINTIFF and Aggrieved Employees consistently
23 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
24 However, PLAINTIFF and Aggrieved Employees were consistently unable to take timely, off duty,
25 thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted
26 meal periods, and/or work through part or all their meal periods due to understaffing, the nature and
27 constraints of their job duties and/or commentary from supervisors pressuring them to take non-
28 compliant meal periods or skip meal periods completely. Based on information and belief,

1 PLAINTIFF was unable to take a timely 30-minute meal period due to understaffing and the nature
2 and constraints of her job duties, including but not limited to the need to assist/serve customers.
3 Moreover, at times, PLAINTIFF continued working after beginning a purported meal period due to
4 her need to clean up after customers left the restaurant and/or complete other work tasks, thereby
5 depriving PLAINTIFF of a full 30-minute, off-duty meal period. Furthermore, during most of her
6 employment, PLAINTIFF was required to use a time clock machine that was located on a different
7 floor within the hotel. Based on information and belief, PLAINTIFF's meal periods were short, in
8 part due to her need to allow sufficient time to go to and from the different floors in order to punch
9 in and out for meal periods and return to her workstation.

10 43. As described above, PLAINTIFF and other Aggrieved Employees often completed
11 off-the-clock work prior to their scheduled shift time (including but not limited to donning/doffing
12 uniforms and undergoing pre-shift temperature checks) which DEFENDANTS failed to consider
13 when scheduling meal periods for PLAINTIFF and other Aggrieved Employees. Based on
14 information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock
15 work.

16 44. Based on information and belief, other Aggrieved Employees were suffered and
17 permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted,
18 cut short, and/or otherwise on duty due to commentary from supervisors, understaffing, and/or the
19 nature and constraints of their job duties.

20 45. Based on information and belief, DEFENDANTS implemented policies and/or
21 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
22 during unpaid meal periods.

23 46. Based on information and belief, DEFENDANTS failed to instruct Aggrieved
24 Employees as to the timing and duty-free nature of meal periods. Based on further information and
25 belief, Aggrieved Employees did not have a compliant written meal period policy, nor did
26 DEFENDANTS have a compliant policy in practice.

27 47. Moreover, based on information and belief, Aggrieved Employees who worked shifts
28 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

1 48. Based on information and belief, despite DEFENDANTS' failure to provide lawful
2 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
3 times of Aggrieved Employees' meal periods and/or automatically deducting at least thirty minutes
4 per shift for missed, on-duty, and/or otherwise unlawful meal periods despite having actual and/or
5 constructive knowledge that Aggrieved Employees did not receive lawful meal periods. Based on
6 information and belief, this time rounding policy resulted in PLAINTIFF and other Aggrieved
7 Employees not being paid for all time worked as well as late and/or shortened meal periods. *See*
8 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

9 49. PLAINTIFF is further informed and believes and thereon alleges that
10 DEFENDANTS had actual and/or constructive knowledge that its policies and practices resulted in
11 the denial of lawful meal periods owed to PLAINTIFF and other Aggrieved Employees, in violation
12 of California's meal period laws.

13 50. Moreover, based on information and belief, DEFENDANTS failed to pay
14 PLAINTIFF and Aggrieved Employees an additional hour of wages at their respective regular rates
15 of compensation for each workday a proper meal period was not provided. DEFENDANTS either
16 failed to pay a meal period premium at all for each workday a proper meal period was not provided
17 or failed to pay the proper meal period premium for failure to incorporate all non-discretionary
18 remuneration, including but not limited to, non-discretionary bonus pay, shift differential pay,
19 and/or other non-discretionary compensation into the regular rate of compensation for purposes of
20 calculating the owed meal period premium.

21 51. **Rest Periods Violations.** DEFENDANTS did not properly authorize or permit
22 PLAINTIFF and Aggrieved Employees to take compliant rest periods at a rate of every four (4)
23 hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the
24 work period, as required by law.

25 52. PLAINTIFF and Aggrieved Employees were not adequately informed, authorized,
26 instructed about, nor permitted an opportunity to take lawful rest periods per California law.

27 53. Based on information and belief, DEFENDANTS had no policy in place nor
28 instruction as to the taking, timing, or duty-free nature of rest periods.

1 54. Based on information and belief, DEFENDANTS did not have a have a compliant
2 written rest period policy, nor did DEFENDANTS have a compliant rest period policy in practice.
3 Based on information and belief, any purported rest periods were interrupted, cut short, on duty,
4 restricted to premises, and/or late due to the nature and constraints of Aggrieved Employees' job
5 duties, need to assist customers (and/or complete other work tasks), understaffing, and/or
6 commentary from supervisors pressuring them to skip rest periods completely and/or take non-
7 compliant rest periods. For example, PLAINTIFF was consistently unable to take a timely off-duty
8 rest period (or any rest period at all) due to understaffing, and the nature and constrains of her job
9 duties, including but not limited to the need to assist/serve customers (and/or complete other
10 assigned work tasks).

11 55. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
13 employer's control during rest periods.

14 56. Based on information and belief, Aggrieved Employees were pressured to complete
15 their work duties according to a designated schedule such that rest periods were only taken once
16 tasks were completed, and/or as time permitted.

17 57. Furthermore, DEFENDANTS failed to pay PLAINTIFF and Aggrieved Employees
18 an additional hour of wages at the regular rate of pay for each workday they were denied a compliant
19 rest period in violation of Labor Code section 226.7. DEFENDANTS either failed to pay a rest
20 period premium at all for each workday a proper rest period was not provided or failed to pay the
21 proper rest period premium for failure to incorporate all non-discretionary remuneration, including
22 but not limited to, shift differential pay, bonus pay and/or other non-discretionary compensation into
23 the regular rate of compensation for purposes of calculating the owed rest period premium.

24 58. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
25 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
26 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
27 DEFENDANTS failed, and continue to fail, to keep accurate and complete records as required by
28 law, including but not limited to the following records: total daily hours worked, applicable rates of

1 pay, time records showing when PLAINTIFF and other Aggrieved Employees began and ended
2 each work period, time records of meal periods, shift start times and end times, and accurate itemized
3 wage statements.

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

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

18 **61.** Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
19 recordkeeping provisions, minimum wages and overtime wages, and business expenses result in
20 separate violations of sections 1198 and 1199.

21 **62. Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
22 Code section 216 by failing to pay PLAINTIFF and other Aggrieved Employees for all hours
23 worked at the proper wage rate and by failing to pay an additional hour of pay for each meal/rest
24 period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries, Inc.*
25 (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil penalties
26 under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each
27
28

1 Aggrieved Employee, for each pay period during which the statute provisions were violated.⁶

2 **63. Statutory Wage Violations.** As described above, DEFENDANTS willfully and
3 systematically denied PLAINTIFF and other Aggrieved Employees of all earned minimum and
4 overtime compensation for all hours worked which resulted in the payment of less than statutorily
5 required wages. DEFENDANTS acted with the intent to deprive them of statutory wages, including,
6 but not limited to, overtime wages and minimum wages, to which they were entitled to under
7 California law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and
8 other Aggrieved Employees lower wages than those they were entitled to while purporting that
9 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other
10 Aggrieved Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon,
11 pursuant to Labor Code § 2699(f)-(g).

12 **64. Unlawful Deductions.** PLAINTIFF alleges on information and belief that
13 DEFENDANTS made unlawful deductions from Aggrieved Employees' paychecks during the
14 relevant period, including but not limited to \$10 that were deducted every pay period as part of
15 DEFENDANTS' subsidized meal plan. Based on information and belief, these deductions are
16 unlawful and in violation of including but not limited to, Labor Code Sections 221-222 which
17 subject DEFENDANTS to civil penalties under Labor Code Section 2699.

18 **65. Violation of Labor Code section 351 and 353.** Based on information and belief,
19 DEFENDANTS failed to ensure that Aggrieved Employees fully received the gratuities left for them
20 by patrons, in that DEFENDANTS and its agents would collect and/or take a portion of the gratuities
21 for themselves, in violation of Labor Code Section 351. Based on further information and belief,
22 DEFENDANTS also failed/fails to keep accurate records of all tips received, in violation of Labor
23 Code Section 353. Based on information and belief, DEFENDANTS failed to pay gratuities paid by
24 customers using credit cards to Aggrieved Employees by the next regular payday following the
25 credit card payment, in violation of Labor Code section 351.

26 _____
27 ⁶ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 66. Based on information and belief, DEFENDANTS charge an additional service
2 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
3 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
4 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
5 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
6 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
7 constitute a gratuity that is intended to the employees providing the service).

8 67. **Inaccurate Wage Statements.** DEFENDANTS failed to provide PLAINTIFF and
9 Aggrieved Employees, with accurate itemized wage statements that complied with Labor Code
10 section 226. DEFENDANTS issued wage statements that failed to among other things, indicate the
11 gross and net wages earned during the pay period, the correct applicable rates of pay for all hours
12 worked, and the "total hours worked" by PLAINTIFF and other Aggrieved Employees (by virtue
13 of rounded time entries, automatic deduction for meal periods/failure to relieve Aggrieved
14 Employees of all duties and employer control during unpaid meal periods, and/or other off-the-clock
15 work policies and practices described above) which results in a violation of Labor Code section
16 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury
17 under Labor Code Section 226 (*Maldonado v Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308,
18 1337).

19 68. In addition, because of the violations detailed above, including but not limited to, not
20 paying regular and overtime wages for all hours worked and failing to provide meal and rest break
21 premiums, and not paying sick leave wages at the proper rates, DEFENDANTS violated California
22 Labor Code section 226 by willfully failing to furnish PLAINTIFF and Aggrieved Employees with
23 accurate, itemized wage statements. As described herein, based on information and belief,
24 DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned
25 during the pay period into the regular rate of pay for purposes of calculating the owed overtime rate,
26 and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by
27 PLAINTIFF and other Aggrieved Employees. Accordingly, DEFENDANTS violated Labor Code
28 section 226.

1 69. Based on further information and belief, DEFENDANTS issued wage statements to
2 PLAINTIFF and Aggrieved Employees that failed to list the accurate total hours worked whenever
3 shift differential wages were paid in violation of Labor Code section 226.

4 70. Separately, and independent from the above allegations, DEFENDANTS issued
5 wage statements to PLAINTIFF and Aggrieved Employees that further violate Labor Code section
6 226(a), by among other things, failing to list the correct name and/or address of the legal entity that
7 is the employer.

8 71. As a result, DEFENDANTS issued wage statements that were not accurate and did
9 not include all of the statutorily required information.

10 72. **Sick Leave Violations.** Throughout the relevant period, DEFENDANTS either
11 failed to provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
12 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (as a result
13 of DEFENDANTS' time rounding policy and practice, automatic deduction policies and practices
14 for meal periods, and/or other off-the-clock work described above) and by failing to incorporate
15 multiple rates of pay and/or failure to incorporate all forms of non-discretionary remuneration into
16 the sick pay calculation.

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

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

26 75. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
27 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
28 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees

1 were entitled to the maximum number of hours accruable.

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

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

8 78. On information and belief, PLAINTIFF alleges that all of these practices were
9 experienced and continue to be experienced by other Aggrieved Employees.

10 79. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code section 248.2
11 provides that all employers with 26 or more employees are required to provide up to 80 hours for
12 covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves,
13 to care for a family member or if it is vaccine-related. Based on information and belief,
14 DEFENDANTS violated Labor Code section 248.2 by not providing Aggrieved Employees with
15 required 2021 COVID-19 Supplemental Paid Sick Leave.

16 80. Based on information and belief, DEFENDANTS failed to provide Supplemental
17 Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

18 81. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
19 information and belief, DEFENDANTS failed to timely pay PLAINTIFF and Aggrieved Employees
20 all wages that were due and owing upon termination (including but not limited to layoffs) or
21 resignation. Based on information and belief, DEFENDANTS untimely provide final wages to
22 Aggrieved Employees without regard to the timing requirements of Labor Code section 201-202.
23 For example, PLAINTIFF last worked for DEFENDANTS on or about December 1, 2021, yet
24 DEFENDANTS issued PLAINTIFF's last paycheck on or around December 10, 2021.

25 82. Based on information and belief, upon separation of employment, other Aggrieved
26 Employees' final paychecks were not timely provided and/or were not timely provided with all owed
27 vacation pay and/or paid time off. Moreover, final paychecks, once provided, did not include all
28 owed wages as they were devoid of, including but not limited to, all owed minimum wages, overtime

1 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
2 properly accrued rates.

3 83. **Unreimbursed Business Expenses.** DEFENDANTS required that PLAINTIFF and
4 Aggrieved Employees incur business expenses as a direct consequence of the performance of their
5 job duties without providing reimbursement, in violation of Labor Code section 2802. Based on
6 information and belief, PLAINTIFF and Aggrieved Employees were improperly required to provide
7 and maintain work tools that are supposed to be the responsibility of the employer, including but
8 not limited to the use of a personal cell phone.

9 84. Based on information and belief, DEFENDANTS shifted the costs of doing business
10 onto PLAINTIFF and Aggrieved Employees by requiring them to pay for business expenses,
11 including but not limited to, use of a personal mobile phone and data usage for work related purposes
12 including but not limited to making and receiving work-related calls and/or messages from co-
13 workers and/or managers/supervisors.

14 85. As a pattern and practice, DEFENDANTS regularly failed to reimburse and
15 indemnify PLAINTIFF and other Aggrieved Employees for this business expense. Pursuant to
16 California Labor Code section 2802, PLAINTIFF and other Aggrieved Employees were entitled to
17 be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
18 and/or carrying out the duties assigned by DEFENDANTS.

19 86. DEFENDANTS' failure to provide PLAINTIFF and Aggrieved Employees with full
20 reimbursement for all reasonable expenses associated with carrying out their duties required that
21 Aggrieved Employees subsidize and/or carry the burden of business expenses in violation of Labor
22 Code section 2802.

23 87. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
24 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
25 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

26 **Unlawful Agreements-Unlawful Criminal History Inquiries.**

27 Unlawful Financial and Criminal Background Checks

28 88. Based on information and belief, DEFENDANTS required Aggrieved Employees to

1 agree in writing to unlawful conditions of employment including but not limited to unlawful
2 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
3 violation of Labor Code section 432.5.

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

9 90. Based on information and belief, DEFENDANTS also required PLAINTIFF and
10 Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background
11 checks as a condition of obtaining and/or holding employment in violation of the Investigative
12 Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair
13 Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). For example, based on information
14 and belief, DEFENDANTS conducted a background check on PLAINTIFF as a condition of
15 obtaining employment. Based on information and belief, DEFENDANTS failed and continue to fail
16 to comply with the requirements of the ICRAA and FCRA when conducting background screenings
17 for applicants, including but not limited to Aggrieved Employees that were subject to a background
18 check (as a condition of employment) during the application phase.

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

1 92. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
2 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
3 section 432.5.

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

9 94. Based on further information and belief, DEFENDANTS knew that requiring
10 PLAINTIFF and Aggrieved Employees to agree to unlawful criminal and/or financial background
11 checks as a condition of obtaining and/or holding employment was unlawful.

12 95. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
13 condition of employment, DEFENDANTS violated Labor Code section 432.5.

14 96. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
15 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
16 then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved
17 Employees about arrests not resulting in convictions on its employment application, in violation of
18 California law. For example, in DEFENDANTS' application for employment, PLAINTIFF was
19 required to answer the following question in writing:

20 -“Have you ever been arrested or charged with a crime for which trial is currently
21 pending?”

22 97. Upon information and belief, DEFENDANTS, in violation of California law,
23 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
24 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
25 employment and/or otherwise impermissibly inquired into criminal history on its employment
26 application in violation of California law. For example, in DEFENDANTS' application for
27 employment (and prior to extending an offer of employment), PLAINTIFF was required to answer
28 the following questions in writing:

1 -“Have you ever been convicted of a felony, including a guilty plea or plea of nolo
2 contendere?”

3 -“Have you ever been convicted of a misdemeanor which resulted in imprisonment,
4 including a guilty or plea or plea of nolo contendere?”

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

10 99. As such, PLAINTIFF and Aggrieved Employees continue to be subject to various
11 unlawful provisions as a condition of employment.

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

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
16 **2698, *ET SEQ.***

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

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

20 **Failure to Keep Accurate Records**

21 102. California Labor Code § 1174 requires employers to keep “accurate and complete”
22 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
23 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
24 times during which all owed meal periods were provided each day.

25 103. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
26 and complete records as required by law, including but not limited to the following records: total
27 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
28 Aggrieved Employees began and ended each work period, time records of meal periods, and

1 accurate itemized wage statements.

2 104. DEFENDANTS' failure to keep "accurate and complete" payroll records for
3 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
4 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties
5 under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section
6 and Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for
7 each pay period during which the referenced statutes and Wage Order provisions were violated.⁷

8 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

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

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

24 107. Personnel Records. In addition to their right to time and pay records, employees, and

25 ⁷ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 their representatives, have the right to inspect and receive a copy of their personnel files pursuant
2 to Labor Code section 1198.5. This statute applies to both former and current employees. Labor
3 Code section 432 further specifies that employers must furnish copies of all employment records
4 bearing the employee's signature. Labor Code section 1198.5 also requires that the file be made
5 available for inspection or receipt within a "reasonable" amount of time, but "not later than 30
6 calendar days from the date the employer receives a written request." An employer's failure to
7 comply within this timeframe likewise entitles a current or former employee to recover a seven
8 hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

9 108. Based on information and belief, DEFENDANTS fail to timely produce or make
10 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
11 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations
12 subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

13 **Meal Period Violations**

14 109. California law requires employers to provide employees a duty-free, uninterrupted
15 thirty (30) minute meal period when an employee works more than five (5) hours in a workday,
16 and it must be provided within the first five (5) hours the employee works. Lab. Code section 512
17 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v.*
18 *Superior Court* (2012) 53 Cal.4th 1004.

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

28 111. 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”).

8 112. 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 § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
12 provide an employee a meal period in accordance with the applicable provision of this Order, the
13 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
14 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

15 113. PLAINTIFF and the Aggrieved Employees were consistently unable to take timely,
16 off duty, thirty-minute, uninterrupted first and second meal periods, often being forced to take late
17 meal periods, interrupted meal periods and/or work through part or all of their meal periods due to
18 understaffing, the nature and constraints of their job duties, and/or commentary from supervisors
19 pressuring them to take non-compliant meal periods or skip meal periods completely.

20 114. Based on information and belief, DEFENDANTS had and continue to have a policy
21 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty
22 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
23 Aggrieved Employees did not receive compliant meal periods.

24 115. Moreover, based on information and belief, Aggrieved Employees did not receive a
25 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

26 116. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
27 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
28 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in

1 violation of California's meal period laws.

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

7 118. 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, § 11. These violations subject
9 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
10 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
11 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

12 **Rest Period Violations**

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

27 120. As explained above, PLAINTIFF and the Aggrieved Employees did not receive
28 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.

1 Any purported rest periods were interrupted, cut short, on duty, restricted to premises, and/or late
2 due to the nature and constraints of Aggrieved Employees' job duties, need to assist customers
3 (and/or complete other work tasks), understaffing, and/or commentary from supervisors pressuring
4 PLAINTIFF and Aggrieved Employees to skip rest periods completely or otherwise take non-
5 compliant rest periods.

6 121. Based on information and belief, DEFENDANTS implemented policies and/or
7 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
8 employer control during rest periods. Based on further information and belief, Aggrieved
9 Employees were pressured to complete their work duties according to a designated schedule such
10 that rest periods were only taken once tasks were completed, and/or as time permitted.

11 122. As a result, PLAINTIFF and Aggrieved Employees did not receive legally compliant
12 first, second, or third rest periods as required by California law.

13 123. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
14 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
15 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
16 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
17 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
18 the regular rate of compensation for purposes of determining the owed rest period premium.

19 124. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
20 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
21 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

22 **Minimum and Overtime Wage Violations**

23 125. California law provides that employees in California must be paid for all hours
24 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
25 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
26 The minimum wage standard applies to each hour employees worked for which they were not paid.
27 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
28 even if averaging an employee's total pay over all hours worked, paid or not, results in an average

1 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

8 127. As explained herein, PLAINTIFF and Aggrieved Employees regularly worked
9 minimum and overtime hours for which they were not compensated as required by California law.
10 DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked
11 by virtue of, among other things, DEFENDANTS' time rounding, automatic deduction for meal
12 periods, off-the-clock/unpaid work completed during meal periods, other pre-shift and post-shift
13 off-the-clock work (described above), and/or payment according to scheduled hours worked rather
14 than actual hours worked resulted in the failure to account for all hours worked and thus the denial
15 of minimum wages.

16 128. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
17 Aggrieved Employees for all hours worked.

18 129. Based on information and belief, DEFENDANTS had and continue to have a policy
19 of paying PLAINTIFF and Aggrieved Employees for scheduled hours, rather than actual hours
20 worked.

21 130. Based on information and belief, DEFENDANTS had and continue to have a policy
22 of requiring PLAINTIFF and Aggrieved Employees to perform off-the-clock work including but
23 not limited to pre-shift temperature checks, pre-shift and post-shift donning and doffing, and
24 attending post-shift meetings.

25 131. Based on information and belief, DEFENDANTS had actual or constructive
26 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
27 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
28 periods, policy and practice of payment according to scheduled work time rather than actual work

1 time, and other mandated off-the-clock work resulted in the underpayment of minimum wages and
2 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

3 132. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
4 and unpaid overtime wages owed to PLAINTIFF and those Aggrieved Employees that worked
5 more than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid double
6 time wages.

7 133. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
8 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
9 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
10 violation of California's overtime laws.

11 134. Based on information and belief, DEFENDANTS further violated California's
12 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
13 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-
14 discretionary compensation into the regular rate of pay used to calculate the overtime rate of pay.
15 Failing to include non-discretionary compensation into the regular rate of pay resulted in a
16 miscalculation of the overtime wage rate, resulting in the underpayment of overtime wages owed
17 to PLAINTIFF and other Aggrieved Employees.

18 135. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
19 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
20 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable
21 IWC Wage Orders, section 20.

22 **Statutory Wage Violations**

23 136. California Labor Code section 223 makes it unlawful for an employer to secretly pay
24 wages lower than required by statute while purporting to pay legal wages. As described above,
25 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
26 earned minimum and overtime compensation for all hours worked which resulted in the payment
27 of less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
28 statutory wages, including, but not limited to, minimum and overtime wages, to which they were

1 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
2 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
3 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
4 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
5 Labor Code § 2699(f)-(g).

6 **Refusal to Make Payment**

7 137. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
8 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
9 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
10 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
11 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
12 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
13 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.⁸

15 **Business Expense Violations**

16 138. California law requires employers to indemnify their employees for all necessary
17 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
18 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
19 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
20 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys'
21 fees incurred by the employee enforcing the rights granted by this section."

22 139. Among other things, under California law, when employees must use their personal
23 cellphones for work-related purposes, the employer must reimburse them for a reasonable
24 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
25 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was

26
27 ⁸ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
2 *Id.* 1144-1145. Further, “any contract or agreement, express or implied, made by any employee to
3 waive the benefits of this article or any part thereof, is null and void, and this article shall not
4 deprive any employee or his personal representative of any right or remedy to which he is entitled
5 to under the laws of this State.” *See* Cal. Lab. Code section 2804.

6 140. As described above, PLAINTIFF and the Aggrieved Employees were improperly
7 required to pay for business expenses that are legally the responsibility of the employer, including
8 but not limited to, personal cell phone/data plan usage and charges.

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

13 142. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
14 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
15 DEFENDANTS’ orders and/or carrying out the duties assigned by DEFENDANTS.

16 143. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
17 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
18 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
19 Code § 2802 and the applicable Wage Order.

20 **Wage Statement Violations**

21 144. California law requires every employer semi-monthly or at the time of each payment
22 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
23 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
24 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
25 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
26 is paid; (7) the name of the employee and only the last four digits of his or her social security
27 number or an employee identification number other than a social security number; (8) the name
28 and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate. Lab.
2 Code § 226.

3 145. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved Employees with
4 meal and rest periods that complied with Labor Code section 226.7, the wage statements
5 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
6 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
7 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
8 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
9 during the pay period and the corresponding number of hours worked at each hourly rate by the
10 employee, in violation of Labor Code section 226(a)(9).

11 146. Moreover, due to violations detailed above, including but not limited to,
12 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
13 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
14 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
15 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
16 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
17 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
18 compensation earned during the pay period into the regular rate of pay for purposes of calculating
19 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
20 overtime worked by PLAINTIFF and other Aggrieved Employees. Moreover, wage statements
21 issued by DEFENDANTS failed to list the "total hours worked" by PLAINTIFF and Aggrieved
22 Employees (by virtue of rounded time entries, automatic deduction for meal periods/failure to
23 relieve Aggrieved Employees of all duties and employer control during unpaid meal periods, and/or
24 other off-the-clock work policies and practices all described in greater detail *supra*), which results
25 in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement,
26 gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics,*
27 *Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

28 147. Based on further information and belief, DEFENDANTS issued wage statements to
33
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 PLAINTIFF and Aggrieved Employees that failed to list the accurate total hours worked whenever
2 shift differential wages were paid in violation of Labor Code section 226.

3 148. Separately, and independent from the above allegations, DEFENDANTS issued
4 wage statements to PLAINTIFF and Aggrieved Employees that violate Labor Code section
5 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the employer.

6 149. DEFENDANTS' failure to accurately list all hours worked on all wage statements
7 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
8 Employees over whether they received all wages owed to them.

9 150. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
10 they could not easily determine whether they received all wages owed to them and whether they
11 were paid for all hours worked. Moreover, as a result of DEFENDANTS' failure to list the correct
12 name and/or address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees
13 have suffered injury as they could not contact their employer regarding any question(s) they had
14 about wages paid.

15 151. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and the
16 Aggrieved Employees with accurate, itemized wage statements.

17 152. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
18 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
19 during which the statute provisions were violated.

20 **Standard Conditions of Labor Violations**

21 153. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
22 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
23 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
24 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
25 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
26 and minimum/overtime wages 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 **Sick Leave Violations**

1 154. DEFENDANTS violated California's paid sick leave laws including, Labor Code
2 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
3 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
4 DEFENDANTS' failure to account for actual hours worked (as a result of DEFENDANTS' time
5 rounding policy and practice, automatic deduction policies and practices for meal periods, and/or
6 other off-the-clock work described above) and by failing to incorporate multiple rates of pay and/or
7 failure to incorporate all forms of non-discretionary remuneration into the sick pay calculation.

8 155. DEFENDANTS failed to give PLAINTIFF and other Aggrieved Employees notice
9 of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor Code
10 section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick
11 leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
12 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

17 157. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
18 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
19 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
20 were entitled to the maximum number of hours accruable.

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

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

27 160. On information and belief, PLAINTIFF alleges that all of these practices were
28 experienced and continue to be experienced by other Aggrieved Employees.

1 161. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
2 aforementioned code provisions including but not limited to Labor Code sections 233 and 234, and
3 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

4 **Failure To Provide Supplemental Paid Sick Leave**

5 Labor Code section 248.2 provides that all employers with 26 or more employees are
6 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
7 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based
8 on information and belief, DEFENDANTS violated Labor Code section 248.2 by not providing
9 Aggrieved Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

10 162. Based on information and belief, DEFENDANTS failed to provide Supplemental
11 Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

12 **Untimely Payment of Final Wages**

13 163. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
14 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
15 and payable immediately." California Labor Code section 202(a) provides, in relevant part, that
16 "[i]f an employee not having a written contract for a definite period quits his or her employment,
17 his or her wages shall become due and payable not later than 72 hours thereafter, unless the
18 employee has given 72 hours previous notice of his or her intention to quit, in which case the
19 employee is entitled to his or her wages at the time of quitting."

20 164. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
21 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
22 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
23 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
24 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see
25 also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

26 165. Based in information and belief, DEFENDANTS failed and continue to fail to timely
27 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
28 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF

1 and Aggrieved Employees do not include all wages owed as they are devoid of, including but not
2 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
3 sick leave and/or paid time off wages at the properly accrued rates.

4 166. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
5 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
6 256.

7 167. **Unlawful Deductions:** Labor Code section 221 prohibits an employer from
8 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
9 to said employee.” COMPLAINANT alleges on information and belief that DEFENDANTS made
10 unlawful deductions from Aggrieved Employees’ paychecks during the relevant period, including
11 but not limited to \$10 that were deducted every pay period as part of DEFENDANTS’ subsidized
12 meal plan. Based on information and belief, these deductions are unlawful and in violation of
13 including but not limited to, Labor Code Sections 221-222 which subject DEFENDANTS to civil
14 penalties under Labor Code Section 2699.

15 168. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for
16 each pay period during which the statute provisions were violated. See Lab. Code §225.5
17 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
18 provided in this article, every person who unlawfully withholds wages due any employee in
19 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
20 to pay each employee”).

21 **Violation of Labor Code section 351 and 353**

22 169. Labor Code Section 351 prohibits employers and their agents from sharing in or
23 keeping any portion of a gratuity left for or given to one or more employees by a patron.
24 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
25 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
26 mandates employers to keep accurate records of all gratuities received.

27 170. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
28 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS and its

1 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
2 Code Section 351. Based on further information and belief, DEFENDANTS also failed/fails to keep
3 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
4 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
5 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
6 Labor Code section 351.

7 171. Based on information and belief, DEFENDANTS charge an additional service
8 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
9 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
10 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
11 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
12 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
13 constitute a gratuity that is intended to the employees providing the service).

14 172. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
15 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
16 they experienced within the statutory period, and \$200 per pay period for each additional violation.

17 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

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

11 176. Based on information and belief, DEFENDANTS required Aggrieved Employees to
12 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
13 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

14 177. Based on further information and belief, DEFENDANTS required Aggrieved
15 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
16 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
17 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
18 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

19 178. Based on further information and belief, DEFENDANTS knew that requiring
20 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
21 condition of obtaining and/or holding employment was unlawful.

22 179. By requiring that Aggrieved Employees sign off on the illegal background and/or
23 financial checks, DEFENDANTS violated Labor Code section 432.5.

24 180. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
25 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
26 then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved
27 Employees about arrests not resulting in convictions on its employment application, in violation of
28 California law. For example, in DEFENDANTS' application for employment, PLAINTIFF was

1 required to answer the following question in writing:

2 -“Have you ever been arrested or charged with a crime for which trial is currently
3 pending?”

4 181. 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 Aggrieved Employees about convictions prior to extending an offer of
7 employment and/or otherwise impermissibly inquired into criminal history on its employment
8 application in violation of California law. For example, in DEFENDANTS’ application for
9 employment (and prior to extending an offer of employment), PLAINTIFF was required to answer
10 the following questions in writing:

11 -“Have you ever been convicted of a felony, including a guilty plea or plea of nolo
12 contendere?”

13 -“Have you ever been convicted of a misdemeanor which resulted in imprisonment,
14 including a guilty or plea or plea of nolo contendere?”

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

20 183. As such, PLAINTIFF and Aggrieved Employees continue to be subject to various
21 unlawful provisions as a condition of employment.

22 184. Under the provisions of PAGA and the above mentioned Labor Code sections,
23 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
24 245-248.6, 256, 351, 353, 432, 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
25 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as
26 all interpretations of these laws by California Courts and administrative bodies, as well as any other
27 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

28 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the

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

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

11 **PRAYER FOR RELIEF**

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

- 14 1. For civil penalties under Labor Code Section 2699 (75% payable to the
15 LWDA and 25% payable to Aggrieved Employees);
- 16 2. For an order temporarily, preliminarily and permanently enjoining and
17 restraining DEFENDANTS from engaging in similar unlawful conduct as set
18 forth herein;
- 19 3. For reasonable attorney's fees and costs of suit; and
- 20 4. For such other and further relief that the Court deems just and proper.

21 Dated: August 18, 2022

CROSNER LEGAL, PC

22

23

24

By: 

25

Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.

26

Blake R. Jones, Esq.
Sepideh Ardestani, Esq.

27

Attorneys for Plaintiff,
CRISTINA CATALANO

28

EXHIBIT

1



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May 27, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CSC Lawyers Incorporating Service
Agent for Service of Process for:
Beverly Hills Hotel Management, LLC
2710 Gateway Oaks Dr. Ste 150N.
Sacramento CA, 95833

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
BHR TRS Beverly Hills, LLC
2710 Gateway Oaks Dr. Ste 150N.
Sacramento CA, 95833

Cogency Global Inc.
Agent for Service of Process for:
Mr. C Manager, LLC
122 East 42nd Street, 18th Floor
New York, NY 10168

CSC – Lawyers Incorporating Service
Company
Agent for Service of Process for:
Braemar Hotels & Resorts, Inc.
7 St. Paul Street Suite 820
Baltimore MD 21202

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Beverly Hills Hotel Management, LLC; Mr. C Manager, LLC; BHR TRS Beverly Hills, LLC; and Braemar Hotels & Resorts, Inc.
Date: May 27, 2022
Subject: *Cristina Catalano v. Beverly Hills Hotel Management, LLC et. al.*

Introduction

This office represents COMPLAINANT, Cristina Catalano (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Beverly Hills Hotel Management, LLC; Mr. C Manager, LLC; BHR TRS Beverly Hills, LLC; and Braemar Hotels & Resorts, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State and/or as provided to the Secretary of State in which entity was formed.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not

cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties

for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages hotels in California including but not limited to the Mr. C Beverly Hills hotel.¹ At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a server (and/or similar position/title) at the restaurant located in

¹ See <https://www.mrchotels.com/mrcbeverlyhills/>. Last visited on May 26, 2022.

See also <https://www.bhrreit.com/>. Last visited on May 27, 2022.

EMPLOYER's Mr. C Beverly Hills hotel in Beverly, Hills California. COMPLAINANT worked for EMPLOYER from in or about April 2019 through in or around December 2021. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) failed and continues to fail to comply with Labor Code sections 351 and 353; (13) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding policy and practice, auto deduction policies and practices and/or other off-the-clock work policies and practices (described below).

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor

Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

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

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

Personnel Records

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

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES worked shifts of five and one-half (5 ½) hours or more, entitling them to at least one meal period. However, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute meal periods. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal

periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal periods or skip meal periods completely. Based on information and belief, COMPLAINANT was unable to take a timely 30-minute meal period due to understaffing and the nature and constraints of her job duties, including but not limited to the need to assist/serve customers. Moreover, at times, COMPLAINANT continued working after beginning a purported meal period due to her need to clean up after customers left the restaurant and/or complete other work tasks, thereby depriving COMPLAINANT of a full 30-minute, off-duty meal period. Furthermore, during most of her employment, COMPLAINANT was required to use a time clock machine that was located on a different floor within the hotel. Based on information and belief, COMPLAINANT's meal periods were short, in part due to her need allow sufficient time to go to and from the different floors in order to punch in and out for meal periods and return to her workstation.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES often completed off-the-clock work prior to their scheduled shift time (including but not limited to donning/doffing and pre-shift temperature checks) which EMPLOYER failed to take into account when scheduling meal periods for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing, and/or the nature and constraints of their job duties.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal periods despite having actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods. Based on information and belief, this time rounding policy resulted in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal period policy, nor did EMPLOYER have a compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of timely, uninterrupted meal periods that were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, and 1199 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking or timing of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have a compliant rest period policy in practice. Based on information and belief, any purported rest periods were interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, need to assist customers (and/or complete other work tasks), understaffing, and/or commentary from supervisors pressuring them to skip rest periods completely and/or take non-compliant rest periods. For example, COMPLAINANT was consistently unable to take a timely off-duty rest period (or any rest period at all) due to understaffing, and the nature and constraints of her job duties, including but not limited to the need to assist/serve customers (and/or complete other assigned work tasks).

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest periods were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED

EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” See all applicable Wage Orders section 4. The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See all applicable Wage Orders section 2. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

Based on information and belief, EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

time rounding policies and practices, automatic deduction for purported meal periods (and/or failure to relieve employees of all duties/employer control during unpaid meal periods, short meal periods, or otherwise unlawful meal period practices). Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not afforded lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's mandated off-the-clock work policies and practices, including but not limited to pre-shift and post-shift off-the-clock work.

Prior to clocking in for a scheduled shift, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo pre-shift temperature screenings that took at least two to three minutes to complete. This work time was off-the-clock and uncompensated.

EMPLOYER also required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to don and doff their work uniform prior to clocking in to work. Upon arriving at the hotel (and after completing the pre-shift temperature screening), COMPLAINANT was required to go to the locker room and pick up her uniform. COMPLAINANT then walked to the nearest restroom to change into her uniform (EMPLOYER's locker room did not have changing rooms). After changing into her uniform, COMPLAINANT returned to the locker room to place her belongings in her locker. This process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

Similarly, after completing a scheduled shift, COMPLAINANT was required to clock out first, then go to the locker room to retrieve her belongings. She then walked to the nearest restroom to change out of her uniform. After changing, COMPLAINANT either returned her uniform to her locker, or left her uniform in the laundry department. If and when COMPLAINANT left her uniform in the laundry department, COMPLAINANT was required to fill out paperwork in the laundry department. This process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

Additionally, COMPLAINANT was occasionally required to attend meetings with EMPLOYER's human resources department after clocking out of a scheduled shift. For example, if a customer or guest complained at the restaurant, and/or there was a disciplinary matter or policy that needed to be addressed, human resources asked to speak to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES after clocking out of a scheduled shift. As a result, meetings with human resources were off-the-clock and uncompensated. COMPLAINANT recalls attending a post-shift off-the-clock meeting with human resources that lasted approximately one hour.

Moreover, based on information and belief, COMPLAINANT completed off-the-clock work due to EMPLOYER's policy and/or practice of paying for scheduled hours worked rather than actual hours worked. For example, in addition to using a time clock, COMPLAINANT was required to fill out a daily time sheet at the restaurant. COMPLAINANT's manager required that NON-EXEMPT AGGRIEVED EMPLOYEES write down their scheduled shift start, and shift end times as opposed to their actual start and end times. As a result, COMPLAINANT regularly wrote down her scheduled shift end time even though her actual shift end time was much later (due to her need to assist customers, clean up after customers and/or complete other work tasks). Based on information and belief, COMPLAINANT was paid for the hours notated on the daily time sheet as opposed to the hours recorded by the time clock machine.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding policies and practices, auto-deduction policies and practices for purported meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies/failure to pay for all hours worked resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work policies and practices resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's time rounding policies and practices automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, and/or other off-the-clock work (described above) resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of EMPLOYER's time rounding policy and practice, automatic deduction policies and practices for meal periods, and/or other off-the-clock work described above) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED EMPLOYEES on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of the sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain accurate records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

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

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on further information and belief, EMPLOYER issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the accurate total hours worked whenever shift differential wages were paid in violation of Labor Code section 226.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” COMPLAINANT alleges on information and belief that EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period, including but not limited to \$10 that were deducted every pay period as part of EMPLOYER’s subsidized meal plan. Based on information and belief, these deductions are unlawful and in violation of including but not limited to, Labor Code Sections 221-222 which subject EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.[1] [1] See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention

to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination (including but not limited to layoffs) or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202. For example, COMPLAINANT last worked for EMPLOYER on or about December 1, 2021, yet EMPLOYER issued COMPLAINANT's last paycheck on or around December 10, 2021.

Based on information and belief, upon separation of employment, other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. See Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to the use of a personal cell phone.

Based on information and belief, EMPLOYER shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of a personal mobile phone and data usage for work related purposes including but not limited to making and receiving work-related calls and/or messages from co-workers and/or managers/supervisors.

As a pattern and practice, EMPLOYER regularly failed to fully reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for this business expense. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

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

Based on information and belief, EMPLOYER failed to ensure that NON-EXEMPT AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that EMPLOYER and its agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, EMPLOYER also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353. Based on information and belief, EMPLOYER failed to pay gratuities paid by customers using credit cards to NON-EXEMPT AGGRIEVED EMPLOYEES by the next regular payday following the credit card payment, in violation of Labor Code section 351.

Based on information and belief, EMPLOYER charges an additional service charge to its customers/patrons. Customers are led to believe that the service charge will be paid to EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES. Instead, EMPLOYER keeps a majority (if not the entirety) of the service charge, thereby depriving NON-EXEMPT AGGRIEVED EMPLOYEES of the service charge/gratuity that is left by the patron/customer for the NON-EXEMPT AGGRIEVED EMPLOYEES. *See O'Grady v Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended to the employees providing the service).

Pursuant to PAGA, EMPLOYER is liable for penalties of \$100 per pay period payable to each NON-EXEMPT AGGRIEVED EMPLOYEE for the first violation of Labor Code Sections 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting

requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, based on information and belief, EMPLOYER conducted a background check on COMPLAINANT as a condition of obtaining employment. Based on information and belief, EMPLOYER failed and continues to fail to comply with the requirements of the ICRAA and FCRA when conducting background screenings for applicants, including but not limited to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that were subject to a background check (as a condition of employment) during the application phase.

Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to

agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law. For example, in EMPLOYER's application for employment, COMPLAINANT was required to answer the following question:

-“Have you ever been arrested or charged with a crime for which trial is currently pending?”

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law. For example, in EMPLOYER's application for employment (and prior to extending an offer of employment), COMPLAINANT was required to answer the following questions:

-“Have you ever been convicted of a felony, including a guilty plea or plea of nolo contendere?”

-“Have you ever been convicted of a misdemeanor which resulted in imprisonment, including a guilty or plea or plea of nolo contendere?”

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws,

and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC

EXHIBIT

2



Zachary Crosner, Esq.
Managing Attorney
Los Angeles Office
9440 Santa Monica Blvd.,
Ste. 301
Beverly Hills, CA 90210

zach@crosnerlegal.com
office: (310) 496-5818
fax: (310) 510-6429

June 1, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CSC Lawyers Incorporating Service
Agent for Service of Process for:
Beverly Hills Hotel Management, LLC
2710 Gateway Oaks Dr. Ste 150N.
Sacramento CA, 95833

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
BHR TRS Beverly Hills, LLC
2710 Gateway Oaks Dr. Ste 150N.
Sacramento CA, 95833

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
Remington Lodging & Hospitality, LLC
2710 Gateway Oaks Drive Ste. 150N.
Sacramento, CA 95833

Cogency Global Inc.
Agent for Service of Process for:
Mr. C Manager, LLC
122 East 42nd Street, 18th Floor
New York, NY 10168

CSC – Lawyers Incorporating Service
Company
Agent for Service of Process for:
Braemar Hotels & Resorts, Inc.
7 St. Paul Street Suite 820
Baltimore MD 21202

CSC – Lawyers Incorporating Service
Agent for Service of Process for:
Ashford TRS Beverly Hills LLC
2710 Gateway Oaks Drive Ste. 150N.
Sacramento, CA 95833

AMENDED NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Beverly Hills Hotel Management, LLC; Mr. C Manager, LLC; BHR TRS Beverly Hills, LLC; Braemar Hotels & Resorts, Inc.; Remington Lodging & Hospitality, LLC; and Ashford TRS Beverly Hills LLC
Date: June 1, 2022
Subject: *Cristina Catalano v. Beverly Hills Hotel Management, LLC et. al.*
LWDA Case No. LWDA-CM-886110-22

Introduction

This office represents COMPLAINANT, Cristina Catalano (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Beverly Hills Hotel Management, LLC; Mr. C Manager, LLC; BHR TRS Beverly Hills, LLC; Braemar Hotels & Resorts, Inc.; Remington Lodging & Hospitality, LLC; and Ashford TRS Beverly Hills LLC (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of COMPLAINANT’s original notice filed on May 27, 2022 (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of COMPLAINANT’s original notice filed on May 27, 2022 (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written amended notice (“AMENDED NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This AMENDED NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State and/or as provided to the Secretary of State in which the entity was formed. The reason for this AMENDED NOTICE is to add Remington Lodging & Hospitality, LLC and Ashford TRS Beverly Hills LLC as entities that employed COMPLAINANT during the relevant period.

This AMENDED NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this AMENDED NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This AMENDED NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This AMENDED NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of COMPLAINANT’s original notice filed on May 27, 2022. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this AMENDED NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this AMENDED NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 351-353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT received wage statements identifying Beverly Hills Hotel Management LLC as the employer, and other wage statements identifying BHR TRS Beverly Hills LLC as the employer. COMPLAINANT also received wage statements that stated the following: “Employing Entity: Beverly Hills Marriott 150 South Beverly Drive, Los Angeles, CA 90035.” Based on information and belief, the Beverly Hills Marriott is owned, managed, and/or operated by Remington Lodging & Hospitality, LLC,¹ and/or Ashford TRS Beverly Hills LLC.² Moreover, some documents in COMPLAINANT’s personnel file identify Mr. C Manager, LLC as the employer. Based on information and belief, at times during the relevant period, Mr. C Beverly Hills hotel was owned, managed and/or operated by Remington Lodging & Hospitality, LLC.³ Furthermore, documents in COMPLAINANT’s personnel file, including but not limited to an employee handbook identify “Remington” as the employer. Upon information and belief, Braemar Hotels & Resorts, Inc., acquired the Mr. C Beverly Hills hotel at some time during the relevant period. By reason of EMPLOYER’s status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT

¹ See <https://www.remingtonhotels.com/portfolio>. Last visited on June 1, 2022.

² See <https://www.ahtreit.com/portfolio.htm>. Last visited on June 1, 2022.

³ See <https://www.remingtonhotels.com/portfolio>. Last visited on June 1, 2022.

AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the original date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages hotels in California including but not limited to the Mr. C Beverly Hills hotel.⁴ At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a server (and/or similar position/title) at the restaurant located in EMPLOYER's Mr. C Beverly Hills hotel in Beverly, Hills California. COMPLAINANT worked for EMPLOYER from in or about April 2019 through in or around December 2021. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES

⁴ See <https://www.mrchotels.com/mrcbeverlyhills/>. Last visited on May 26, 2022.

See also <https://www.bhrreit.com/>. Last visited on May 27, 2022;

See also <https://www.remingtonhotels.com/portfolio>. Last visited on June 1, 2022; and

See also See <https://www.ahltreit.com/portfolio.htm>. Last visited on June 1, 2022.

for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) failed and continues to fail to comply with Labor Code sections 351 and 353; (13) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's time rounding policy and practice, auto deduction policies and practices and/or other off-the-clock work policies and practices (described below).

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁵

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

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

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee’s signature.

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee’s personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a

second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES worked shifts of five and one-half (5 ½) hours or more, entitling them to at least one meal period. However, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute meal periods. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal periods or skip meal periods completely. Based on information and belief, COMPLAINANT was unable to take a timely 30-minute meal period due to understaffing and the nature and constraints of her job duties, including but not limited to the need to assist/serve customers. Moreover, at times, COMPLAINANT continued working after beginning a purported meal period due to her need to clean up after customers left the restaurant and/or complete other work tasks, thereby depriving COMPLAINANT of a full 30-minute, off-duty meal period. Furthermore, during most of her employment, COMPLAINANT was required to use a time clock machine that was located on a different floor within the hotel. Based on information and belief, COMPLAINANT's meal periods were short, in part due to her need allow sufficient time to go to

and from the different floors in order to punch in and out for meal periods and return to her workstation.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES often completed off-the-clock work prior to their scheduled shift time (including but not limited to donning/doffing and pre-shift temperature checks) which EMPLOYER failed to take into account when scheduling meal periods for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing, and/or the nature and constraints of their job duties.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal periods despite having actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods. Based on information and belief, this time rounding policy resulted in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal period policy, nor did EMPLOYER have a compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of timely, uninterrupted meal periods that were free of

EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, and 1199 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking or timing of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have a compliant rest period policy in practice. Based on information and belief, any purported rest periods were interrupted, cut short, on duty, restricted to premises, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, need to assist customers (and/or complete other work tasks), understaffing, and/or commentary from supervisors pressuring them to skip rest periods completely and/or take non-compliant rest periods. For example, COMPLAINANT was consistently unable to take a timely off-duty rest period (or any rest period at all) due to understaffing, and the nature and constraints of her job duties, including but not limited to the need to assist/serve customers (and/or complete other assigned work tasks).

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest periods were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty,

for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁷

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” See all applicable Wage Orders section 4. The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See all applicable Wage Orders section 2. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

Based on information and belief, EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s time rounding policies and practices, automatic deduction for purported meal periods (and/or failure to relieve employees of all duties/employer control during unpaid meal periods, short meal periods, or otherwise unlawful meal period practices). Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not afforded lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

⁷ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's mandated off-the-clock work policies and practices, including but not limited to pre-shift and post-shift off-the-clock work.

Prior to clocking in for a scheduled shift, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo pre-shift temperature screenings that took at least two to three minutes to complete. This work time was off-the-clock and uncompensated. EMPLOYER also required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to don and doff their work uniform prior to clocking in to work. Upon arriving at the hotel (and after completing the pre-shift temperature screening), COMPLAINANT was required to go to the locker room and pick up her uniform. COMPLAINANT then walked to the nearest restroom to change into her uniform (EMPLOYER's locker room did not have changing rooms). After changing into her uniform, COMPLAINANT returned to the locker room to place her belongings in her locker. This process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

Similarly, after completing a scheduled shift, COMPLAINANT was required to clock out first, then go to the locker room to retrieve her belongings. She then walked to the nearest restroom to change out of her uniform. After changing, COMPLAINANT either returned her uniform to her locker, or left her uniform in the laundry department. If and when COMPLAINANT left her uniform in the laundry department, COMPLAINANT was required to fill out paperwork in the laundry department. This process, which took at least twenty (20) minutes to complete, was off-the-clock and uncompensated.

Additionally, COMPLAINANT was occasionally required to attend meetings with EMPLOYER's human resources department after clocking out of a scheduled shift. For example, if a customer or guest complained at the restaurant, and/or there was a disciplinary matter or policy that needed to be addressed, human resources asked to speak to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES after clocking out of a scheduled shift. As a result, meetings with human resources were off-the-clock and uncompensated. COMPLAINANT recalls attending a post-shift off-the-clock meeting with human resources that lasted approximately one hour.

Moreover, based on information and belief, COMPLAINANT completed off-the-clock work due to EMPLOYER's policy and/or practice of paying for scheduled hours worked rather than actual hours worked. For example, in addition to using a time clock, COMPLAINANT was required to fill out a daily time sheet at the restaurant. COMPLAINANT's manager required that NON-EXEMPT AGGRIEVED EMPLOYEES write down their scheduled shift start, and shift end times as opposed to their actual start and end times. As a result, COMPLAINANT regularly wrote down her scheduled shift end time even though her actual shift end time was much later (due to her need to assist customers, clean up after customers and/or complete other work tasks). Based on information and belief, COMPLAINANT was paid for the hours notated on the daily time sheet as opposed to the hours recorded by the time clock machine.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding policies and practices, auto-deduction policies and practices for purported meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies/failure to pay for all hours worked resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work policies and practices resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁸

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's time rounding policies and practices automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, and/or other off-the-clock work (described above) resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

⁸ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁹

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of EMPLOYER's time rounding policy and practice, automatic deduction policies and practices for meal periods, and/or other off-the-clock work described above) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED EMPLOYEES on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of the sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain accurate records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as

permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.¹⁰

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

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage

¹⁰ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on further information and belief, EMPLOYER issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the accurate total hours worked whenever shift differential wages were paid in violation of Labor Code section 226.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.¹¹

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” COMPLAINANT alleges on information and belief that EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period, including but not limited to \$10 that were deducted every pay period as part of EMPLOYER’s subsidized meal plan. Based on information and belief, these deductions are unlawful and in violation of including but not limited to, Labor Code Sections 221-222 which subject EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.[1] [1] See Lab. Code §225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute’s provisions were violated.

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

¹¹ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, and business expenses result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination (including but not limited to layoffs) or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202. For example, COMPLAINANT last worked for EMPLOYER on or about December 1, 2021, yet EMPLOYER issued COMPLAINANT's last paycheck on or around December 10, 2021.

Based on information and belief, upon separation of employment, other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹²

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to the use of a personal cell phone.

¹² (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

Based on information and belief, EMPLOYER shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, use of a personal mobile phone and data usage for work related purposes including but not limited to making and receiving work-related calls and/or messages from co-workers and/or managers/supervisors.

As a pattern and practice, EMPLOYER regularly failed to fully reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for this business expense. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

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

Based on information and belief, EMPLOYER failed to ensure that NON-EXEMPT AGGRIEVED EMPLOYEES fully received the gratuities left for them by patrons, in that EMPLOYER and its agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, EMPLOYER also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353. Based on information and belief, EMPLOYER failed to pay gratuities paid by customers using credit cards to NON-EXEMPT AGGRIEVED EMPLOYEES by the next regular payday following the credit card payment, in violation of Labor Code section 351.

Based on information and belief, EMPLOYER charges an additional service charge to its customers/patrons. Customers are led to believe that the service charge will be paid to EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES. Instead, EMPLOYER keeps a majority (if not the entirety) of the service charge, thereby depriving NON-EXEMPT AGGRIEVED EMPLOYEES of the service charge/gratuity that is left by the patron/customer for the NON-EXEMPT AGGRIEVED EMPLOYEES. *See O'Grady v Merchant Exchanges*

Production, Inc., 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended to the employees providing the service).

Pursuant to PAGA, EMPLOYER is liable for penalties of \$100 per pay period payable to each NON-EXEMPT AGGRIEVED EMPLOYEE for the first violation of Labor Code Sections 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.” Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, based on information and belief, EMPLOYER conducted a background check on COMPLAINANT as a condition of obtaining employment. Based on information and belief, EMPLOYER failed and continues to fail to comply with the requirements of the ICRAA and FCRA when conducting background

screenings for applicants, including but not limited to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that were subject to a background check (as a condition of employment) during the application phase.

Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law. For example, in EMPLOYER's application for employment, COMPLAINANT was required to answer the following question:

-“Have you ever been arrested or charged with a crime for which trial is currently pending?”

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law. For example, in EMPLOYER’s application for employment (and prior to extending an offer of employment), COMPLAINANT was required to answer the following questions:

-“Have you ever been convicted of a felony, including a guilty plea or plea of nolo contendere?”

-“Have you ever been convicted of a misdemeanor which resulted in imprisonment, including a guilty or plea or plea of nolo contendere?”

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys’ fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this AMENDED NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this AMENDED NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this AMENDED NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this AMENDED NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC