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Assigned for All Purposes
Judge Lon F. Hurwitz
cx-103

7 Attorneys for Plaintiff NOAH T. HODGIN
8 on behalf of the State of California,
and others similarly situated and aggrieved,

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE**

11 NOAH T. HODGIN, on behalf of the State
12 of California, and others similarly situated
and aggrieved,

13 Plaintiff,

14 v.

15 MARKET BROILER ORANGE, INC.,
California Corporation; HUNTINGTON
16 BEACH MARKET BROILER, INC., a
California Corporation; RIVERSIDE
17 MARKET BROILER, INC., a California
Corporation; MARKET BROILER SIMI
18 VALLEY, INC., a California Corporation;
MARKET BROILER ONTARIO, INC., a
19 California Corporation; MARKET
BROILER FREMONT, LLC, a California
20 Limited Liability Company; PREFERRED
HOSPITALITY, INC., a California
21 Corporation; and DOES 1-100, inclusive,

22
23 Defendants.

Case No.: 30-2023-01302833-CU-OE-CXC

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

1 Plaintiff, NOAH T. HODGIN (“PLAINTIFF”), an individual on behalf of the State of
2 California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants MARKET BROILER ORANGE, INC., California Corporation;
4 HUNTINGTON BEACH MARKET BROILER, INC., a California Corporation; RIVERSIDE
5 MARKET BROILER, INC., a California Corporation; MARKET BROILER SIMI VALLEY, INC.,
6 a California Corporation; MARKET BROILER ONTARIO, INC., a California Corporation;
7 MARKET BROILER FREMONT, LLC, a California Limited Liability Company; PREFERRED
8 HOSPITALITY, INC., a California Corporation; and DOES 1-100, inclusive, (collectively referred
9 to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as
10 follows:

11 **INTRODUCTION**

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

17 **JURISDICTION AND VENUE**

18 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
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 Orange 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 this judicial
24 district. *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069
25 (venue in a PAGA action is proper in any county where the defendants committed Labor Code
26 violations against some of its employees).

27 **THE PARTIES**

28 1. 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. PLAINTIFF was employed by DEFENDANTS
2 in the State of California as a non-exempt employee from in or around October 2021 through in or
3 around May 2022.

4 2. PLAINTIFF worked for DEFENDANTS as a server and/or similar position/title at
5 DEFENDANTS' Market Broiler restaurant located in Orange, California.

6 3. Defendant MARKET BROILER ORANGE, INC., is a California Corporation that,
7 at all relevant times, was authorized to do business within the State of California and is doing
8 business in the State of California.

9 4. Defendant HUNTINGTON BEACH MARKET BROILER, INC., is a California
10 Corporation that, at all relevant times, was authorized to do business within the State of California
11 and is doing business in the State of California.

12 5. Defendant RIVERSIDE MARKET BROILER, INC., is a California Corporation
13 that, at all relevant times, was authorized to do business within the State of California and is doing
14 business in the State of California.

15 6. Defendant MARKET BROILER SIMI VALLEY, INC., is a California Corporation,
16 that at all relevant times, was authorized to do business within the State of California and is doing
17 business in the State of California.

18 7. Defendant MARKET BROILER ONTARIO, INC., is a California Corporation that,
19 at all relevant times, was authorized to do business within the State of California and is doing
20 business in the State of California.

21 8. Defendant MARKET BROILER FREMONT, LLC, is a California Limited Liability
22 Company that, at all relevant times, was authorized to do business within the State of California and
23 is doing business in the State of California.

24 9. Defendant PREFERRED HOSPITALITY, INC., is a California Corporation that, at
25 all relevant times, was authorized to do business within the State of California and is doing business
26 in the State of California.

27 10. DEFENDANTS own, operate, or otherwise manage restaurants in California
28 including but not limited to restaurants operating under the Market Broiler brand name with

1 locations in various cities including but not limited to restaurant locations in Riverside, Orange,
2 Fremont, Huntington Beach, Simi Valley, and Ontario, California.¹

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

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

19 **JOINT LIABILITY**

20 13. Under California law, the definition of the terms “to employ” are broadly construed
21 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
22 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
23 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
24 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
25 was to reach situations in which multiple entities control different aspects of the employment
26 relationship. Supervision of the work, in the specific sense of exercising control over how services
27 are properly performed, is properly viewed as one of the “working conditions” mentioned in the

28 ¹ See <https://www.marketbroker.com/locations>. Last visited on October 4, 2022.

1 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
2 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
3 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
4 California, applying a less stringent standard to what constitutes sufficient control by a business
5 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
6 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
7 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
8 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
9 employment,” *Id.* at 875 [emphasis added].

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

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

1 employment matters; and, (6) DEFENDANTS share employees.

2 4. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
3 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
4 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
5 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
6 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
7 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example,
8 PLAINTIFF is informed and believes and thereon alleges that Defendants MARKET BROILER
9 ORANGE, INC., HUNTINGTON BEACH MARKET BROILER, INC., RIVERSIDE MARKET
10 BROILER, INC., MARKET BROILER SIMI VALLEY, INC., MARKET BROILER ONTARIO,
11 INC., MARKET BROILER FREMONT, LLC, and PREFERRED HOSPITALITY, INC., and each
12 of them, are owned and operated by the same individuals, and share the same headquarters/principal
13 place of business at 7119 Indiana Avenue, Riverside, CA 92504, and share the same general
14 managers and human resources department/personnel. Based on information and belief,
15 PREFERRED HOSPITALITY, INC., owns, manages, and/or otherwise operates restaurants under
16 the "Market Broiler" name.² Moreover, PLAINTIFF received policies and practices that contained
17 the "Market Broiler" name and logo. Based on information and belief, Aggrieved Employees
18 received the same policies irrespective of the location they worked at.

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

28 ² See <https://www.preferredhospitalityinc.com/portfolio>. Last visited on October 4, 2022.

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

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

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

14 19. PLAINTIFF is informed and believes and hereon alleges that DEFENDANTS must
15 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
16 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform
17 services from which they benefited, and furthermore that the aforementioned entities had the right
18 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant
19 times herein, so as to be considered the joint employers of PLAINTIFF.

20 20. By reason of their status as joint employers of PLAINTIFF and Aggrieved
21 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
22 Code and applicable Wage Orders as to all Aggrieved Employees.

23 **PAGA ALLEGATIONS**

24 21. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
25 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
26 Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

27 All current and former non-exempt employees that worked either
28 directly or via a staffing agency for DEFENDANTS at any location

1 in California at any time from one year plus 65 days from the filing
2 of the initial Complaint through the present (“PAGA Period”).

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

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

15 23. On May 25, 2022, PLAINTIFF, through counsel, gave written notice by online filing
16 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
17 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
18 in this Complaint (“PAGA Notice”). Attached hereto as **Exhibit 1** is a true and correct copy of the
19 PAGA Letter also sent to DEFENDANTS via certified mail. On November 9, 2022, PLAINTIFF,
20 through counsel, gave written amended notice by online filing with the LWDA (“Amended PAGA
21 Notice”), alleging an additional theory or liability under Labor Code section 226. Attached hereto as
22 **Exhibit 2** is a true and correct copy of the Amended PAGA Notice also sent to Defendants via
23 certified mail.

24 24. The PAGA Notice and Amended PAGA Notice outlined PLAINTIFF’s claims for
25 violations of the California Labor Code and the applicable wage orders on behalf of the State of
26 California and all Aggrieved Employees.

27 25. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
28 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the

1 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
2 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
3 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
4 has duly accrued.

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

8 FACTUAL ALLEGATIONS

9 27. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
10 worked for DEFENDANTS in the State of California. At all times referenced herein,
11 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
12 permitted them to work.

13 28. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
14 PLAINTIFF worked for DEFENDANTS as a server and/or similar position/title at DEFENDANTS'
15 Market Broiler restaurant in Orange, California, from in or around October 2021 through in or
16 around May 2022.

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

19 30. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
20 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
21 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
22 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
23 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
24 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
25 below.

26 31. Based on information and belief, DEFENDANTS implemented a policy and/or
27 practice of rounding meal period start and end times and/or automatically deducting at least thirty
28 minutes per shift for meal periods, despite having actual and/or constructive knowledge that

1 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
2 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
3 PLAINTIFF and Aggrieved Employees of all wages owed.

4 32. Based on information and belief, Aggrieved Employees were not paid for all hours
5 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
6 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
7 the clock work policies and/or practices. For example, DEFENDANTS maintained a policy and
8 practice of rounding Aggrieved Employees' time punches to the nearest quarter hour.
9 DEFENDANTS provided PLAINTIFF with a time and attendance policy that stated as follows: "In
10 order to maintain consistent time reporting, clock punch times are rounded to the nearest 15-minute
11 mark. In order to round to 15 minutes the actual time punches are rounded on the quarter hour."
12 PLAINTIFF's wage statements also demonstrate that PLAINTIFF's total hours worked are rounded
13 to the quarter hour. As a result of DEFENDANTS' time rounding policy and practice, PLAINTIFF's
14 and other Aggrieved Employees' total hours worked were not accurately recorded and/or some of
15 the hours worked were effectively off-the-clock. Due to this unlawful rounding policy and practice,
16 PLAINTIFF and Aggrieved Employees were not paid all owed minimum wages and overtime wages
17 for all hours worked.

18 33. Based on information and belief, DEFENDANTS failed to pay Aggrieved
19 Employees for time they were required to spend completing orientation, policy questionnaires,
20 and/or time spent completing the onboarding process including but not limited to reviewing various
21 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
22 was completed off-the-clock and was not compensated.

23 34. At times, DEFENDANTS required PLAINTIFF to work two separate shifts in the
24 same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and other
25 Aggrieved Employees split shift compensation whenever their work schedules were interrupted by
26 non-paid non-working periods established by DEFENDANTS, which resulted in a violation of the
27 applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a
28 split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage

1 for that workday...).

2 35. As explained above, DEFENDANTS implemented a time-rounding system that as
3 applied systematically deprived PLAINTIFF and other Aggrieved Employees of compensable time
4 because the time-rounding system implemented by DEFENDANTS would almost always, if not
5 always, result in understating actual compensable work time.

6 36. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
7 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
8 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
9 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
10 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
11 forty (40) hours in a week.

12 37. Based on information and belief, DEFENDANTS had actual and/or constructive
13 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
14 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
15 underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees, in
16 violation of California's minimum and overtime wage laws.

17 38. Based on information and belief, DEFENDANTS failed and continue to fail to pay
18 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
19 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
20 a work week, in violation of California's overtime laws.

21 39. Based on information and belief, at times, DEFENDANTS required PLAINTIFF and
22 other Aggrieved Employees to work two consecutive shifts in the same day but failed to pay the
23 owed overtime for all hours worked over eight hours in a day and/or forty hours in a week. For
24 example, at times PLAINTIFF clocked in and out of work for a shift lasting at least four hours and
25 was required to start a new shift lasting at least four or five hours shortly and/or immediately
26 thereafter. PLAINTIFF was required to clock in and out of each shift so that all hours worked in the
27 same day were paid at his base rate even when working more than eight hours in a day. Accordingly,
28 PLAINTIFF was denied all owed overtime wages.

1 40. Based on information and belief, DEFENDANTS failed to incorporate all non-
2 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
3 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
4 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
5 Aggrieved Employees.

6 41. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
7 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
8 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
9 (30) minute first (and second) meal periods. Based on information and belief, Aggrieved Employees
10 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
11 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
12 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
13 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
14 completely. For example, PLAINTIFF was consistently unable to take a timely meal period due to
15 understaffing and the nature and constraints of his job duties, including but not limited to the need
16 to assist/serve customers. As such, PLAINTIFF was regularly unable to take a timely meal period
17 and often started his meal period (if any) after working more than five hours.

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

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

25 44. Based on information and belief, despite DEFENDANTS' failure to provide lawful
26 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
27 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
28 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal

1 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
2 Employees did not receive lawful meal periods. For example, DEFENDANTS had a policy and
3 practice of rounding the total hours worked by PLAINTIFF and other Aggrieved Employees (as
4 described above). Based on information and belief, meal periods were late due in part, due to
5 DEFENDANTS' time rounding policy and practice and/or were cut short due in part, to
6 DEFENDANTS' time rounding policy and practice, which also resulted not only in unlawful meal
7 periods but also unpaid/off-the-clock work.

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

10 46. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
11 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
12 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
13 did DEFENDANTS have any sort of compliant policy in practice.

14 47. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
15 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
16 Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally
17 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other
18 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
19 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

20 48. Based on information and belief, DEFENDANTS had actual and/or constructive
21 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
22 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
23 violation of California's meal period laws.

24 49. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
25 additional hour of wages at their respective regular rates of compensation for each workday a lawful
26 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
27 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
28 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,

1 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
2 compensation for purposes of calculating the owed meal period premium.

3 50. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
4 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
5 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
6 middle of the work period, as required by law.

7 51. PLAINTIFF and other Aggrieved Employees were not adequately informed,
8 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
9 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
10 the taking or timing of duty-free rest periods.

11 52. Based on information and belief, DEFENDANTS did not have a have a compliant
12 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
13 practice. Based on information and belief, any purported rest periods were interrupted, cut short, on
14 duty, restricted to premises, and/or late due to the nature and constraints of Aggrieved Employees'
15 job duties, need to assist customers (and/or complete other work tasks), understaffing, and/or
16 commentary from supervisors pressuring them to skip rest periods completely and/or take non-
17 compliant rest periods. For example, PLAINTIFF was consistently unable to take timely off-duty
18 rest periods (or any rest period at all) due to understaffing, and the nature and constrains of his job
19 duties, including but not limited to the need to assist/serve customers (and/or complete other
20 assigned work tasks).

21 53. Based on information and belief, other Aggrieved Employees' rest periods were
22 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and
23 constraints of their job duties, and/or due to commentary from supervisors/managers pressuring
24 them to skip rest periods completely or otherwise take non-compliant rest periods.

25 54. Based on information and belief, DEFENDANTS implemented policies and/or
26 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
27 DEFENDANTS' control during rest periods.

28 55. Based on information and belief, Aggrieved Employees were pressured to complete

1 their work duties according to a designated schedule such that rest periods were only taken once
2 tasks were completed, and/or as time permitted.

3 56. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
4 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in
5 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
6 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
7 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
8 shift differential pay, and/or other non-discretionary compensation into the regular rate of
9 compensation for purposes of calculating the owed rest period premium.

10 57. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
11 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
12 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
13 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
14 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
15 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
16 applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee.

18 58. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
19 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
20 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
21 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
22 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
23 meal periods, and/or other off-the-clock work policies and practices) which results in a violation of
24 Labor Code section 226(a).

25 59. As described herein, based on information and belief, DEFENDANTS also failed to
26 incorporate all forms of non-discretionary compensation earned during the pay period into the
27 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
28 of overtime worked by PLAINTIFF and other Aggrieved Employees.

1 60. Moreover, based on information and belief, DEFENDANTS issued wage statements
2 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
3 other things, failing to list the correct name and/or address of the legal entity that is the employer.

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

7 62. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
8 Employees that were not accurate and did not include all of the statutorily required information. As
9 such, DEFENDANTS violated Labor Code section 226.

10 63. **Failure to Produce Employment Records.** Based on information and belief,
11 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
12 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
13 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
14 request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to timely
15 produce complete records within the time periods delineated by California labor law. Based on
16 information and belief, DEFENDANTS failed and continue to fail to timely produce complete time,
17 pay, and personnel records when requested by other Aggrieved Employees.

18 64. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
19 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
20 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
21 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
22 required by law, including but not limited to the following records: total daily hours worked,
23 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
24 began and ended each work period, time records of meal periods, and accurate itemized wage
25 statements.

26 65. DEFENDANTS have failed and continue to fail to keep accurate and complete
27 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
28 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and

1 employer control during unpaid meal periods, failure to record the true start and end times of meal
2 periods, shift start times and shift end times, and other off-the-clock work policies and practices
3 described herein.

4 **66. Unreimbursed Business Expenses.** Based on information and belief,
5 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
6 as a direct consequence of the performance of their job duties without providing reimbursement, in
7 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
8 Aggrieved Employees were improperly required to provide and maintain work tools that are
9 supposed to be the responsibility of the employer.

10 **67.** Based on information and belief, DEFENDANTS shifted the costs of doing business
11 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
12 to the use of a personal Aggrieved Employees' personal mobile phone and data usage for work
13 related purposes including but not limited to scheduling purposes and payroll purposes. For
14 example, PLAINTIFF was required to use his personal phone to download a phone application
15 called "HotSchedules", which was used for scheduling purposes. DEFENDANTS required
16 PLAINTIFF and other Aggrieved Employees to use this application to schedule their shifts, change
17 shifts, and/or add shifts. Based on information and belief, DEFENDANTS failed to reimburse
18 PLAINTIFF and other Aggrieved Employees for the cost of the application, and for costs associated
19 with using a personal phone for these work-related purposes.

20 **68.** Based on information and belief, Aggrieved Employees were required to download
21 a different application on their phone that was used for payroll purposes, including but not limited
22 to the "PayDayPortal" application. Based on information and belief, DEFENDANTS did not
23 reimburse Aggrieved Employees for the cost of the application and/or the costs associated with
24 using a personal phone for work related purposes.

25 **69.** Based on information and belief, DEFENDANTS regularly failed to reimburse and
26 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
27 2802, PLAINTIFF and other Aggrieved Employees were entitled to be reimbursed for all reasonable
28 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties

1 assigned by DEFENDANTS.

2 70. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
3 for all reasonable expenses associated with carrying out their duties required that Aggrieved
4 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
5 2802.

6 71. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
7 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
8 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
9 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
10 accrued sick leave hours on the correct number of hours worked (as a result of the
11 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
12 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
13 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
14 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
15 compensation into the sick leave pay rate calculation.

16 72. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
17 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
18 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
19 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
20 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
21 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
22 used sick leave and the balance of paid sick leave.

23 73. Based on information and belief, throughout the relevant time period,
24 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
25 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
26 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
27 prior to their respective separations, for as on several occasions thereafter, he or she would have
28 been entitled to use the banked sick leave and earn appropriate compensation.

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

6 75. As such, DEFENDANTS have violated California's paid sick leave laws and
7 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
8 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
9 unlawful practices and policies violate Labor Code sections 245-248.5.

10 76. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
11 that all employers with 26 or more employees are required to provide up to 80 hours for covered
12 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
13 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
14 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
15 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
16 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

25 78. Based on information and belief, DEFENDANTS charge an additional service
26 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
27 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keeps a majority (if not the
28 entirety) of the service charge, thereby depriving Aggrieved Employees of the service

1 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
2 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
3 constitute a gratuity that is intended to the employees providing the service).

4 79. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
5 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
6 were due and owing upon termination or resignation. Based on information and belief,
7 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
8 requirements of Labor Code sections 201-202.

9 80. Upon separation of employment, Aggrieved Employees' final paychecks were not
10 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
11 Moreover, PLAINTIFF's and Aggrieved Employees' final paychecks, once provided, did not
12 include all wages owed as they were devoid of, including but not limited to, all owed minimum
13 wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off
14 wages at the properly accrued rates.

15 81. **Unlawful Agreements-Unlawful Criminal History Inquiries.** Unlawful Financial
16 and Criminal Background Checks. Based on information and belief, DEFENDANTS required
17 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
18 limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
19 employment in violation of Labor Code section 432.5.

20 82. Based on information and belief, DEFENDANTS ordered unlawful financial credit
21 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
22 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
23 employment, in violation of California and Federal law, which results in a further violation of Labor
24 Code section 432.5.

25 83. Based on information and belief, DEFENDANTS also required Aggrieved
26 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
27 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
28 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit

1 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). For example, DEFENDANTS' background
2 check policy states that it requires a "criminal check for all full-time and part-time job applicants
3 applying for Management and Supervisory positions." Based on information and belief,
4 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
5 FCRA when conducting background screenings for applicants, including but not limited to
6 Aggrieved Employees that were subject to a background check (as a condition of employment)
7 during the application phase.

8 84. Based on information and belief, DEFENDANTS required Aggrieved Employees to
9 agree in writing to a background check which failed to abide by the requirements set forth in CA
10 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
11 failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all),
12 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
13 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
14 failing to provide a way by which the individual could request a copy of the report, failing to disclose
15 the name, address, and telephone number of the third party preparing the report, and failing to
16 properly obtain authorization or consent to such a background check, and thus was an unlawful
17 background check.

18 85. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
19 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
20 section 432.5.

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

26 87. Based on further information and belief, DEFENDANTS knew that requiring
27 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
28 condition of obtaining and/or holding employment was unlawful.

1 88. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
2 condition of employment, DEFENDANTS violated Labor Code section 432.5.

3 Unlawful Inquires into Criminal History

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

8 90. Upon information and belief, DEFENDANTS, in violation of California law,
9 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
10 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
11 employment and/or otherwise impermissibly inquired into criminal history on its employment
12 application in violation of California law, and in violation of Labor code section 432.5.

13 91. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
14 engaged in these same herein described unlawful practices, which led to violations of the California
15 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
16 unlawful practices to all of its employees that it applied to PLAINTIFF.

17 **FIRST CAUSE OF ACTION**
18 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
19 **2698, *ET SEQ.***
20 **(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all**
21 **Defendants)**

22 92. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 **Failure to Keep Accurate Records**

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

28 94. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
and complete 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 PLAINTIFF and other

1 Aggrieved Employees began and ended each work period, time records of meal periods, and
2 accurate itemized wage statements.

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

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

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

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

25 ³ 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 "in 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 98. Personnel Records. In addition to their right to time and pay records, employees, and
2 their representatives, have the right to inspect and receive a copy of their personnel files pursuant
3 to Labor Code section 1198.5. This statute applies to both former and current employees. Labor
4 Code section 432 further specifies that employers must furnish copies of all employment records
5 bearing the employee's signature. Labor Code section 1198.5 also requires that the file be made
6 available for inspection or receipt within a "reasonable" amount of time, but "not later than 30
7 calendar days from the date the employer receives a written request." An employer's failure to
8 comply within this timeframe likewise entitles a current or former employee to recover a seven
9 hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

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

14 **Meal Period Violations**

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

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

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

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

16 104. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
17 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
18 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
19 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
20 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
21 periods completely. Based on further information and belief, meal periods were also late or cut short
22 in part due to DEFENDANTS’ time rounding policies and practices as alleged above.

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

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

1 107. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
2 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
3 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
4 violation of California's meal period laws.

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

10 109. These unlawful meal period policies and practices result in violations of Labor Code
11 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
12 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
13 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
14 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

15 **Rest Period Violations**

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

1 226.7, and applicable IWC Wage Order, §12(B).

2 111. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
3 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
4 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
5 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
6 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
7 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

24 **Minimum and Overtime Wage Violations**

25 116. California law provides that employees in California must be paid for all hours
26 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
27 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
28 The minimum wage standard applies to each hour employees worked for which they were not paid.

1 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
2 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
3 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

10 118. DEFENDANTS violated California's minimum and overtime wage laws by failing
11 to compensate PLAINTIFF and the Aggrieved Employees for all hours worked by virtue of, among
12 other things, DEFENDANTS' time rounding policies and practices (for shift start and end times and
13 meal period start and end times), automatic deduction for meal periods, off-the-clock/unpaid work
14 completed during meal periods, and/or other otherwise off-the-clock work (described above), which
15 resulted in the failure to account for all hours worked and thus the denial of minimum and overtime
16 wages.

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

19 120. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and
20 other Aggrieved Employees split shift compensation whenever their work schedules were
21 interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a
22 violation of the applicable Wage Order (*See* section 4 of all applicable Wage orders, "When an
23 employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to
24 the minimum wage for that workday...).

25 121. 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, and/or other off-the-clock work resulted in the underpayment of minimum and overtime

1 wages owed to PLAINTIFF and other Aggrieved Employees.

2 122. Based on information and belief, at times, DEFENDANTS required Aggrieved
3 Employees to work two consecutive shifts in the same day but failed to pay the owed overtime for
4 all hours worked over eight hours in a day and/or forty hours in a week, as explained above.

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

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

16 125. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
17 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
18 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
19 Wage Orders, section 20.

20 **Statutory Wage Violations**

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

1 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
2 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
3 Labor Code § 2699(f)-(g).

4 **Refusal to Make Payment**

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

13 **Business Expense Violations**

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

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

26
27 ⁴ 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).

1 130. Further, “any contract or agreement, express or implied, made by any employee to
2 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
3 any employee or his personal representative of any right or remedy to which he is entitled to under
4 the laws of this State.” *See* Cal. Lab. Code section 2804.

5 131. As described above, PLAINTIFF and the Aggrieved Employees were improperly
6 required to pay for business expenses that are legally the responsibility of the employer, including
7 but not limited to costs associated with purchasing payroll and scheduling applications on their
8 personal phone and costs associated with using their personal mobile phone and data usage for work-
9 related purposes.

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

14 133. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
15 Employees have suffered injury in that they were not completely reimbursed as mandated by
16 California law.

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

21 135. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
22 Employees have suffered injury in that they were not completely reimbursed as mandated by
23 California law.

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

28 **Wage Statement Violations**

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

11 138. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
12 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
13 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
14 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
15 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
16 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours worked at each hourly rate by
18 the employee, in violation of Labor Code section 226(a)(9).

19 139. Moreover, due to violations detailed above, including but not limited to,
20 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
21 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
22 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
23 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
24 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
25 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
26 compensation earned during the pay period into the regular rate of pay for purposes of calculating
27 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
28 overtime worked by PLAINTIFF and other Aggrieved Employees.

1 140. As explained above, wage statements issued by DEFENDANTS failed to list the
2 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
3 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
4 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
5 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
6 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
7 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

8 141. Separately, and independent from the above allegations, based on information and
9 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that
10 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal
11 entity that is the employer.

12 142. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
13 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
14 Employees over whether they received all wages owed to them.

15 143. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
16 they could not easily determine whether they received all wages owed to them and whether they
17 were paid for all hours worked.

18 144. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or
19 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
20 injury as they could not contact their employer regarding any question(s) they had about wages paid.

21 145. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and
22 Aggrieved Employees with accurate, itemized wage statements.

23 146. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Aggrieved
24 Employees have suffered injury. The absence of accurate information on their wage statements has
25 prevented earlier challenges to DEFENDANTS’ unlawful pay practices, will require discovery and
26 mathematical computations to determine the amount of wages owed, and will cause difficulty and
27 expense in attempting to reconstruct time and pay records. DEFENDANTS’ conduct led to the
28 submission of inaccurate information about wages and amounts deducted from wages to state and

1 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
2 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
3 and pay records than if DEFENDANT had complied with its legal obligations.

4 147. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
5 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
6 during which the statute provisions were violated. ⁵

7 **Standard Conditions of Labor Violations**

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

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

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

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

28 ⁵ Labor Code § 226.3 (establishing that the civil penalty is, "per employee per violation").

1 Labor Code section 351.

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

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

12 **Sick Leave Violations**

13 153. DEFENDANTS violated California's paid sick leave laws including, Labor Code
14 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
15 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
16 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
17 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
18 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
19 compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

13 160. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
14 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
15 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

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

17 161. Labor Code § 248.2 provides that all employers with 26 or more employees are
18 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
19 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
20 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
21 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
22 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
23 Labor Code section 248.6.

24 **Untimely Payment of Final Wages**

25 162. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
26 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
27 and payable immediately." California Labor Code section 202(a) provides, in relevant part, that
28 "[i]f an employee not having a written contract for a definite period quits his or her employment,

1 his or her wages shall become due and payable not later than 72 hours thereafter, unless the
2 employee has given 72 hours previous notice of his or her intention to quit, in which case the
3 employee is entitled to his or her wages at the time of quitting.”

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

10 164. Based in information and belief, DEFENDANTS failed and continue to fail to timely
11 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
12 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
13 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
14 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
15 sick leave and/or paid time off wages at the properly accrued rates.

16 165. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
17 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
18 256.

19 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

25 167. The California Labor Code places certain procedural and substantive limits on an
26 employers’ ability to conduct employee background checks and on how employers can use the
27 information they obtain through those background checks. Labor Code section 1024.5 states that
28 employers, except for financial institutions, may order a credit check only if the individual works

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

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

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

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

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

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

26 Unlawful Inquires into Criminal History

27 173. Labor Code section 432.7 prohibits an employer from asking applicants about past
28 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on

1 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
2 convictions on its employment application, in violation of California law.

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

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

13 176. Under the provisions of PAGA and the above mentioned Labor Code sections,
14 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
15 245-248.6, 256, 351, 353, 432, 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
16 1197.1, 1198, 1198.3, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders
17 as well as all interpretations of these laws by California Courts and administrative bodies, as well
18 as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
19 penalties:

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

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

3 **PRAYER FOR RELIEF**

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

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

13 Dated: January 20, 2023

CROSNER LEGAL, PC

14
15 By: 

16 Michael R. Crosner, Esq.
17 Zachary M. Crosner, Esq.
18 Jamie Serb, Esq.
19 Attorneys for Plaintiff,
20 NOAH T. HODGIN
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25
26
27
28

EXHIBIT

1



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May 25, 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:

Rodney K. Couch
Agent for Service of Process for:
Market Broiler Orange, Inc.
7119 Indiana Avenue
Riverside, CA 92504

Rodney K. Couch
Agent for Service of Process for:
Huntington Beach Market Broiler, Inc.
7119 Indiana Avenue
Riverside, CA 92504

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Rodney Couch
Agent for Service of Process for:
Market Broiler Fremont, LLC
7119 Indiana Ave.
Riverside, CA 92504

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Market Broiler Orange, Inc.; Huntington Beach Market Broiler, Inc.; Riverside Market Broiler, Inc.; Market Broiler Simi Valley, Inc.; Market Broiler Ontario, Inc.; Market Broiler Fremont, LLC; and Preferred Hospitality, Inc.
Date: May 25, 2022
Subject: *Noah T. Hodgin v. Market Broiler Orange, Inc. et. al.*

Introduction

This office represents COMPLAINANT, Noah T. Hodgin (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: Market Broiler Orange, Inc.; Huntington Beach Market Broiler, Inc.; Riverside Market Broiler, Inc.; Market Broiler Simi Valley, Inc.; Market Broiler Ontario, Inc.; Market Broiler Fremont, LLC; and Preferred Hospitality, Inc. (hereinafter, this entity and its 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.

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 is informed and believes and thereon alleges that Market Broiler Orange, Inc.; Huntington Beach Market Broiler, Inc.; Riverside Market Broiler, Inc.; Market Broiler Simi

Valley, Inc.; Market Broiler Ontario, Inc.; Market Broiler Fremont, LLC; and Preferred Hospitality, Inc., and each of them, are owned and operated by the same individuals, and share the same headquarters/principal place of business at 7119 Indiana Avenue, Riverside, CA 92504, and share the same general managers and human resources department/personnel. As a result, Market Broiler Orange, Inc.; Huntington Beach Market Broiler, Inc.; Riverside Market Broiler, Inc.; Market Broiler Simi Valley, Inc.; Market Broiler Ontario, Inc.; Market Broiler Fremont, LLC; and Preferred Hospitality, Inc., utilized the same unlawful wage and hour policies and practices, such as but not limited to, those pertaining to payment of minimum and overtime wages and sick leave wages, time record-keeping, rest break and meal break policies and practices, provision of wage statements, provision of final pay, and business expense reimbursement.

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 restaurants in California including but not limited to restaurants operating under the Market Broiler name with locations in Riverside, Orange, Fremont, Huntington Beach, Simi Valley, and Ontario.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 EMPLOYER’s Orange location. COMPLAINANT worked for EMPLOYER from in or about October 2021 through in or around May 2022. 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

¹ See <https://www.marketbroiler.com/locations>. Last visited on May 24, 2022.

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.

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

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

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. For example, COMPLAINANT was consistently unable to take a timely meal period due to understaffing and the nature and constraints of his job duties, including but not limited to the need to assist/serve customers. As such, COMPLAINANT was regularly unable to take a timely meal period and often started his meal period (if any) after working more than five hours.

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.

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, 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. For example, EMPLOYER had a policy and practice of rounding the

total hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES (as described below). Based on information and belief, meal periods were late due in part, to EMPLOYER's time rounding policy and practice and/or were cut short due in part, to EMPLOYER's time rounding policy and practice.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, EMPLOYER illegally rounded the start and end times of purported meal periods resulting 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 break 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.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods 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,

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

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.*, 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 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 his job duties, including but not limited to the need to assist/serve customers (and/or complete other assigned work tasks).

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 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

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”).

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 or otherwise unlawful practices for missed or improper meal periods). 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 time rounding policy and practice. For example, EMPLOYER maintained a policy and practice of rounding NON-EXEMPT AGGRIEVED EMPLOYEES’ time punches to the nearest quarter hour. EMPLOYER provided COMPLAINANT with a time and attendance policy that stated as follows: “In order to maintain consistent time reporting, clock punch times are rounded to the nearest 15-minute mark. In order to round to 15 minutes the actual time punches are rounded on the quarter hour.” COMPLAINANT’s wage statements also demonstrate that COMPLAINANT’s total hours worked are rounded to the quarter hour. As a result of EMPLOYER’s time rounding policy and practice, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were denied of all owed minimum wages (and overtime wages) for all hours worked.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER, resulting in off-the-clock and uncompensated work.

Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever their work schedules were interrupted by non-paid non-working periods established by EMPLOYER, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, “When an

employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday...).

EMPLOYER's failure to pay for all time worked by virtue of its time rounding policies and practices (for shift start and end times and meal period start and end times), 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 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.*

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 (for shift start and end times and meal period start and end times), automatic deduction for meal periods, off-the-clock/unpaid work

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").

completed during meal periods, and/or other off-the-clock work 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, at times, EMPLOYER requires NON-EXEMPT AGGRIEVED EMPLOYEES to work two shifts in the same day but fails to pay the owed overtime for all hours worked over eight hours in a day and/or forty hours in a week.

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 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,

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 "in 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").

and/or other off-the-clock work) 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

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

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).

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 COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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 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.

Based on information and belief, upon separation of employment, COMPLAINANT's 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 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 scheduling purposes and payroll purposes. For example, COMPLAINANT was required to download a phone application, “HotSchedules”, which was used for scheduling purposes. EMPLOYER required COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to use this application to schedule their shifts, change shifts, and/or add shifts. Based on information and belief, EMPLOYER failed to reimburse COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for the cost of the application, and for costs associated with using a personal phone

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”).

for work related scheduling purposes.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were required to download a different application on their phone that was used for payroll purposes, including but not limited to the “PayDayPortal” application. Based on information and belief, EMPLOYER did not reimburse NON-EXEMPT AGGRIEVED EMPLOYEES or EXEMPT AGGRIEVED EMPLOYEES for the cost of the application and/or the cost associated with using a personal phone for work related purposes.

As a pattern and practice, EMPLOYER regularly failed to fully reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. 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, EMPLOYER’s

background check policy states that it requires a “criminal check for all full-time and part-time job applicants applying for Management and Supervisory positions.” 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 (or any disclosure at all), 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, failing to disclose the name, address, and telephone number of the third party preparing 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.

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.

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 script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC

EXHIBIT

2



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (310) 496-5818
fax: (310) 510-6429

November 9, 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:

Rodney K. Couch
Agent for Service of Process for:
Market Broiler Orange, Inc.
7119 Indiana Avenue
Riverside, CA 92504

Rodney K. Couch
Agent for Service of Process for:
Huntington Beach Market Broiler, Inc.
7119 Indiana Avenue
Riverside, CA 92504

Rodney K. Couch
Agent for Service of Process for:
Riverside Market Broiler, Inc.
7119 Indiana Avenue
Riverside, CA 92504

Rodney Couch
Agent for Service of Process for:
Preferred Hospitality, Inc.
880 Eagle Crest
Riverside, CA 92506

Rodney Couch
Agent for Service of Process for:
Market Broiler Simi Valley, Inc.
7119 Indiana Avenue
Riverside, CA 92504-4543

Rodney K. Couch
Agent for Service of Process for:
Market Broiler Ontario, Inc.
7119 Indiana Avenue
Riverside, CA 92504

Rodney Couch
Agent for Service of Process for:
Market Broiler Fremont, LLC
7119 Indiana Ave.
Riverside, CA 92504

AMENDED NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Market Broiler Orange, Inc.; Huntington Beach Market Broiler, Inc.; Riverside Market Broiler, Inc.; Market Broiler Simi Valley, Inc.; Market Broiler Ontario, Inc.; Market Broiler Fremont, LLC; and Preferred Hospitality, Inc.
Date: November 9, 2022
Subject: *Noah T. Hodgkin v. Market Broiler Orange, Inc. et. al.*
LWDA Case No: LWDA-CM-885720-22

Introduction

This office represents COMPLAINANT, Noah T. Hodgkin (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: Market Broiler Orange, Inc.; Huntington Beach Market Broiler, Inc.; Riverside Market Broiler, Inc.; Market Broiler Simi Valley, Inc.; Market Broiler Ontario, Inc.; Market Broiler Fremont, LLC; and Preferred Hospitality, Inc. (hereinafter, this entity and its 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 25, 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 25, 2022 (“EXEMPT AGGRIEVED EMPLOYEES”), hereby provides this 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. The purpose of this AMENDED NOTICE is to allege EMPLOYER’s additional violations of Labor Code section 226.

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 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 25, 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 is informed and believes and thereon alleges that Market Broiler Orange, Inc.; Huntington Beach Market Broiler, Inc.; Riverside Market Broiler, Inc.; Market Broiler Simi Valley, Inc.; Market Broiler Ontario, Inc.; Market Broiler Fremont, LLC; and Preferred Hospitality, Inc., and each of them, are owned and operated by the same individuals, and share the same headquarters/principal place of business at 7119 Indiana Avenue, Riverside, CA 92504, and share the same general managers and human resources department/personnel. As a result, Market Broiler Orange, Inc.; Huntington Beach Market Broiler, Inc.; Riverside Market Broiler, Inc.; Market Broiler Simi Valley, Inc.; Market Broiler Ontario, Inc.; Market Broiler Fremont, LLC; and Preferred Hospitality, Inc., utilized the same unlawful wage and hour policies and practices, such as but not limited to, those pertaining to payment of minimum and overtime wages and sick leave wages, time record-keeping, rest break and meal break policies and practices, provision of wage statements, provision of final pay, and business expense reimbursement.

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 restaurants in California including but not limited to restaurants operating under the Market Broiler name with locations in including but not limited to Riverside, Orange, Fremont, Huntington Beach, Simi Valley, and Ontario.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 EMPLOYER’s Orange location. COMPLAINANT worked for EMPLOYER from in or about October 2021 through in or around May 2022. 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

¹ See <https://www.marketbroiler.com/locations>. Last visited on May 24, 2022.

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.

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

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

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. For example, COMPLAINANT was consistently unable to take a timely meal period due to understaffing and the nature and constraints of his job duties, including but not limited to the need to assist/serve customers. As such, COMPLAINANT was regularly unable to take a timely meal period and often started his meal period (if any) after working more than five hours.

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.

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, 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. For example, EMPLOYER had a policy and practice of rounding the total hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES (as described below). Based on information and belief, meal periods were late due in part, to EMPLOYER's time rounding policy and practice and/or were cut short due in part, to EMPLOYER's time rounding policy and practice.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, EMPLOYER illegally rounded the start and end times of purported meal periods resulting 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 break 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.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods 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 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.

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").

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 his 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

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 "in 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").

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 or otherwise unlawful practices for missed or improper meal periods). 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 time rounding policy and practice. For example, EMPLOYER maintained a policy and practice of rounding NON-EXEMPT AGGRIEVED EMPLOYEES’ time punches to the nearest quarter hour. EMPLOYER provided COMPLAINANT with a time and attendance policy that stated as follows: “In order to maintain consistent time reporting, clock punch times are rounded to the nearest 15-minute mark. In order to round to 15 minutes the actual time punches are rounded on the quarter hour.” COMPLAINANT’s wage statements also demonstrate that COMPLAINANT’s total hours

worked are rounded to the quarter hour. As a result of EMPLOYER's time rounding policy and practice, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were denied of all owed minimum wages (and overtime wages) for all hours worked.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER, resulting in off-the-clock and uncompensated work.

Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever their work schedules were interrupted by non-paid non-working periods established by EMPLOYER, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday...).

EMPLOYER's failure to pay for all time worked by virtue of its time rounding policies and practices (for shift start and end times and meal period start and end times), 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 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

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").

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 (for shift start and end times and meal period start and end times), automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, and/or other off-the-clock work 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, at times, EMPLOYER requires NON-EXEMPT AGGRIEVED EMPLOYEES to work two shifts in the same day but fails to pay the owed overtime for all hours worked over eight hours in a day and/or forty hours in a week.

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 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) 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.

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”).

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

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).

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).

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.

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 COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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.

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

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 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.

Based on information and belief, upon separation of employment, COMPLAINANT's 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 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

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”).

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 scheduling purposes and payroll purposes. For example, COMPLAINANT was required to download a phone application, “HotSchedules”, which was used for scheduling purposes. EMPLOYER required COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to use this application to schedule their shifts, change shifts, and/or add shifts. Based on information and belief, EMPLOYER failed to reimburse COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for the cost of the application, and for costs associated with using a personal phone for work related scheduling purposes.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were required to download a different application on their phone that was used for payroll purposes, including but not limited to the “PayDayPortal” application. Based on information and belief, EMPLOYER did not reimburse NON-EXEMPT AGGRIEVED EMPLOYEES or EXEMPT AGGRIEVED EMPLOYEES for the cost of the application and/or the cost associated with using a personal phone for work related purposes.

As a pattern and practice, EMPLOYER regularly failed to fully reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. 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, EMPLOYER's background check policy states that it requires a "criminal check for all full-time and part-time job applicants applying for Management and Supervisory positions." 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 (or any disclosure at all), 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, failing to disclose the name, address, and telephone number of the third party preparing 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.

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.

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. COMPLAINANT's original notice filed on May 25, 2022 and 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 further 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 the foregoing claims provided in this AMENDED NOTICE, 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 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:

Kiara Bramasco, Esq.
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
direct: 424.335.5236
Main: 310.496.5818
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC