

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Meiers

1 MICHAEL R. CROSNER, ESQ. (SBN 41299)
mike@crosnerlegal.com
2 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
3 BLAKE R. JONES, ESQ. (SBN 211221)
blake@crosnerlegal.com
4 JONATHAN STILZ (SBN 308681)
jon@crosnerlegal.com
5 **CROSNER LEGAL, PC**
9440 Santa Monica Blvd. Suite 301
6 Beverly Hills, CA 90210
7 Tel: (310) 496-5818
Fax: (310) 510-6429

8 Attorneys for Plaintiff LEONEL HERNANDEZ
9 on behalf of himself, the State of California, and others similarly
10 situated and aggrieved

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

13 LEONEL HERNANDEZ on behalf of
14 himself, the State of California, and others
similarly situated and aggrieved,

15 Plaintiff,

17 v.

18 DESIGN MASONRY, INC., a California
19 Corporation; and DOES 1-100, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

Case No.: **22STCV25106**

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

1 Plaintiff, LEONEL HERNANDEZ (“PLAINTIFF”), an individual on behalf of himself, the
2 State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants DESIGN MASONRY, INC., a California Corporation; and DOES
4 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed
5 and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

25 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
26 California and a citizen of the State of California who worked as a full-time non-exempt employee
27 for DEFENDANTS in the State of California.

28 5. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee in a

1 mason and/or similar title/position from in or around August 2019 through in or around June 2021.
2 As a mason, PLAINTIFF worked at various project locations including but not limited to projects
3 completed in Los Angeles, Santa Clarita, and Palmdale, California. PLAINTIFF then worked for
4 DEFENDANTS as a non-exempt employee in a security/similar title or position until in or around
5 November 2021, at which point PLAINTIFF went on leave. As a security, PLAINTIFF regularly
6 worked out of DEFENDANTS' facility in Santa Clarita, California.

7 6. Defendant, DESIGN MASONRY, INC., is a California Corporation that, at all
8 relevant times, was authorized to do business within the State of California and is doing business in
9 the State of California. DEFENDANTS own, manage, or otherwise operate as a masonry contractor
10 in the construction industry. DEFENDANTS offer masonry services including but not limited to
11 retaining walls, fence walls, brick and stone veneer, and pavers for commercial and residential
12 projects.¹

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

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

28 ¹ See <https://designmasonry.com/>. Last visited on July 26, 2022.

1 controlled, aided and abetted the conduct of all other Defendants.

2 **JOINT LIABILITY**

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

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

27 11. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

1 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices and
2 subjected all of the Aggrieved Employees to these same policies and practices regardless of the
3 location(s) where they worked. Among other things, PLAINTIFF is informed and believes that: (1)
4 there is common ownership in, and financial control, in DEFENDANTS' companies, (2)
5 DEFENDANTS utilize common management, who have control over the day-to-day operations and
6 employment matters, including the power to hire and fire, set schedules, issue employee policies,
7 and determine rates of compensation across its locations in California; (3) DEFENDANTS utilize
8 the same policies and procedures for all California employees, including issuing the same employee
9 handbooks and other form agreements; (4) DEFENDANTS use at least some of the same Human
10 Resources personnel and attorneys to oversee employment matters; and, (6) DEFENDANTS share
11 employees.

12 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
13 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
14 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
15 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
16 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
17 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
18 Employees. As such, DEFENDANTS exercised control over various aspects of PLAINTIFF's
19 employment including but not limited to creating and implementing policies to which PLAINTIFF
20 was subjected to and/or controlling the payment of wages and/or compensation for PLAINTIFF and
21 other Aggrieved Employees.

22 13. Upon further information and belief, PLAINTIFF alleges that DEFENDANTS
23 created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and
24 overtime pay, time-keeping practices, meal and rest periods, reimbursement of business expenses
25 and other working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
26 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
27 PLAINTIFF and Aggrieved Employees in a uniform manner. DEFENDANTS collectively
28 represented to PLAINTIFF and Aggrieved Employees that each was an "at-will" employee of

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

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

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

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

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

25 **PAGA ALLEGATIONS**

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

1 All current and former non-exempt employees that worked either
2 directly or via a staffing agency for DEFENDANTS at any location
3 in California at any time from one year plus 65 days from filing of the
4 initial Complaint through the present (“PAGA Period”).

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

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

16 20. On May 4, 2022, PLAINTIFF, through his counsel, gave written notice by online
17 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
18 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
19 in this Complaint (“PAGA Letter”). Attached hereto as **Exhibit 1** is a true and correct copy of the
20 PAGA Letter also sent to DEFENDANTS via certified mail.

21 21. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
22 Labor Code and the applicable wage orders on behalf of himself, the State of California and other
23 Aggrieved Employees.

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

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

4 **FACTUAL AND LEGAL ALLEGATIONS**

5 24. During the PAGA Period, PLAINTIFF and the Aggrieved Employees were
6 employed by DEFENDANTS in the State of California as non-exempt employees. DEFENDANTS,
7 at all times, exercised control over PLAINTIFF and each of the Aggrieved Employees, and suffered
8 and/or permitted them to work.

9 25. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee in a
10 mason and/or similar title/position from in or around August 2019 through in or around June 2021.
11 As a mason, PLAINTIFF worked at various project locations including but not limited to projects
12 completed in Los Angeles, Santa Clarita, and Palmdale, California. PLAINTIFF then worked for
13 DEFENDANTS as a non-exempt employee in a security/similar title or position until in or around
14 November 2021, at which point PLAINTIFF went on leave. As a security, PLAINTIFF regularly
15 worked out of DEFENDANTS' facility in Santa Clarita, California. At all relevant times,
16 PLAINTIFF was a full-time, non-exempt employee that was paid on an hourly basis. PLAINTIFF
17 was typically scheduled to work at least eight (8) hours per shift, at least (5) days per week.

18 26. **Meal Period Violations.** PLAINTIFF and Aggrieved Employees consistently
19 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
20 However, PLAINTIFF and other Aggrieved Employees did not receive legally compliant thirty (30)
21 minute first meal periods. PLAINTIFF and other Aggrieved Employees were consistently unable to
22 take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
23 periods, interrupted meal periods, shortened meal periods, and/or work through part or all their meal
24 periods due to the nature and constraints of their job duties, understaffing, and/or commentary from
25 supervisors pressuring them to take non-compliant meal periods and/or skip meal periods
26 completely. For example, PLAINTIFF's meal periods were regularly interrupted, late, and/or cut
27 short due to his need to complete his job duties and/or complete components of the assigned project,
28 including but not limited to receiving materials (including but not limited to cement) at the work

1 site and/or completing work tasks before the cement or other building materials solidified.

2 27. PLAINTIFF and other Aggrieved Employees regularly performed pre-shift off-the-
3 clock work in order to prepare machinery and work tools for the day and/or complete other work
4 tasks in preparation for the workday. This pre-shift off-the-clock work lasted at least five minutes
5 each day. This work time was not recorded, was not compensated and was not taken into account
6 when scheduling PLAINTIFF's and other Aggrieved Employees' meal periods. Based on
7 information and belief, at times, meal periods were late, in part due to this unaccounted pre-shift
8 work time.

9 28. Based on information and belief, DEFENDANTS required Aggrieved Employees to
10 transport tools and/or work equipment to project sites. Based on information and belief, this work
11 time was off-the-clock, unpaid, and not accounted for when scheduling meal periods. Based on
12 information and belief, meal periods were late, in part due to this unaccounted pre-shift work time.

13 29. Based on information and belief, DEFENDANTS implemented policies and
14 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
15 DEFENDANTS' control during unpaid meal periods.

16 30. As explained herein, Aggrieved Employees were consistently suffered and permitted
17 to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut
18 short due to their need to complete assigned job duties, mandated pre-shift off-the-clock work,
19 and/or work-related interruptions during purported meal periods.

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

23 32. Despite failing to provide lawful meal periods, DEFENDANTS implemented a
24 policy and/or practice of automatically deducting at least thirty minutes per shift for these
25 missed/unlawful meal periods, despite having actual and/or constructive knowledge that
26 PLAINTIFF and other Aggrieved Employees did not receive compliant meal periods.

27 33. DEFENDANTS further failed to keep accurate records of the start and end times of
28 PLAINTIFF's and Aggrieved Employees' meal periods. Based on further information and belief,

1 DEFENDANTS illegally rounded the start and end times of meal periods resulting in PLAINTIFF
2 and other Aggrieved Employees not being paid for all time worked as well as late and/or shortened
3 meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. For example, time records
4 for PLAINTIFF and other Aggrieved Employees show that meal periods were regularly recorded at
5 the same time for exactly thirty minutes, regardless of whether a lawful meal period was provided
6 at the recorded time. Meal periods are consistently recorded for exactly thirty minutes and are
7 rounded to nearest whole or half hour, irrespective of whether a lawful meal period was afforded at
8 the recorded time. Despite failing to record the true start and end times of Aggrieved Employees'
9 meal periods, DEFENDANTS systematically deducted thirty (30) minutes per shift irrespective of
10 whether a full thirty (30) minute meal period was provided.

11 34. Based on further information and belief, DEFENDANTS did not have a lawful
12 written meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.
13 Liability for the Aggrieved Employees can be established by evidence that an employer adopted a
14 uniform corporate break policy that failed to give full effect to California law and the applicable
15 Wage Order requirements. The fact that employees may legally waive meal breaks does not affect
16 this result. *Brinker, supra*, 53 Cal.4th 1004.

17 35. Moreover, based on information and belief, AGGRIEVED EMPLOYEES who
18 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute
19 meal period before the end of the tenth hour of work. Based on further information and belief,
20 DEFENDANTS only provided a single meal period per shift, regardless of the number of hours
21 worked, and that single meal period was non-compliant.

22 36. DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
23 an additional hour of wages at their respective regular rates of compensation for each workday a
24 proper meal period was not provided. DEFENDANTS either failed to pay a meal period premium
25 at all for each workday a proper meal period was not provided and/or failed to pay the proper meal
26 period premium for failure to incorporate all non-discretionary remuneration, including but not
27 limited to, shift differential pay, bonuses, and/or other non-discretionary compensation into the
28 regular rate or compensation for purposes of calculating the owed meal period premium.

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

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

9 39. Based on information and belief, any purported rest periods were interrupted, cut
10 short, on duty, and/or late due to the nature and constraints of PLAINTIFF's and Aggrieved
11 Employees' job duties, understaffing, and/or commentary from supervisors pressuring them to skip
12 rest periods completely and/or take non-compliant rest periods.

13 40. Moreover, PLAINTIFF and other Aggrieved Employees were pressured to complete
14 their work duties/ assigned tasks such that rest periods were only taken once jobs were completed/as
15 time permitted. For example, PLAINTIFF regularly worked at least eight hours per shift but was
16 rarely provided with two compliant rest periods. Instead, PLAINTIFF was often only afforded the
17 opportunity to take a single rest period and that rest period was not compliant, as it was often late,
18 interrupted, and/or on duty. At times, PLAINTIFF worked a full shift of eight hours or more without
19 a single compliant rest period. Based on information and belief, other Aggrieved Employees were
20 also interrupted during their purported ten-minute rest period(s) and/or were not afforded the
21 opportunity to take compliant rest periods.

22 41. Based on information and belief, DEFENDANTS implemented policies and/or
23 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
24 employer control during rest periods.

25 42. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
26 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in
27 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
28 workday a proper rest period was not provided and/or failed to pay the proper rest period premium

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

4 43. **Cooldown Recovery Period Violations:** Under California Labor Code section
5 226.7, if an employer fails to provide an employee a recovery period, the employer shall pay the
6 employee one additional hour of pay at the employee's regular rate of compensation for each
7 workday that the meal or rest or recovery period is not provided.

8 44. PLAINTIFF and other Aggrieved Employees were required to spend multiple hours
9 at a time outdoors in significantly high temperature heat conditions. DEFENDANTS failed to
10 provide proper heat illness prevention training and/or heat illness policies/practices/programs as
11 required by California's Heat Illness Prevention statute, Title 8 Section 3395(d). DEFENDANTS
12 failed to provide adequate access to drinking water as required by California's Heat Illness
13 Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS maintained a policy and
14 practice of not permitting necessary time for cooldown recovery breaks, and as a result, Aggrieved
15 Employees were required to remain outdoors with little to no access to shade for extended periods
16 of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and other Aggrieved Employees
17 with an additional hour of pay at PLAINTIFF's regular rate of pay for each missed cooldown
18 recovery period.

19 45. **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 deductions and time
23 rounding policies, payment according to scheduled hours worked instead of actual time worked,
24 mandated pre-shift off-the-clock work policies, other off-the-clock work policies and/or practices
25 and failure to relieve employees of all duties/employer control during unpaid meal periods or
26 otherwise unlawful practices for missed or improper meal periods.

27 46. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
28 unable to take timely off duty, thirty-minute, uninterrupted meal periods. Based on information and

1 belief, DEFENDANTS implemented a policy and/or practice of automatically deducting at least
2 thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that
3 the purported meal periods were short, not taken, interrupted, or not relieved of all duties and
4 employer control.

5 47. Moreover, DEFENDANTS rounded the start and end times of employee meal
6 periods and true shift start and end times resulting in PLAINTIFF and other Aggrieved Employees
7 not being paid for all hours worked. For example, DEFENDANTS compensated PLAINTIFF only
8 for scheduled hours worked rather than all hours actually worked. DEFENDANTS' time records
9 for PLAINTIFF and other Aggrieved Employees recorded the scheduled shift start time and shift
10 end time. As such, the recorded shift start time and shift end time were always rounded to the nearest
11 whole hour or the nearest half hour. Likewise, meal period start times and end times were always
12 rounded to the nearest whole hour or half hour. Based on information and belief, EMPLOYER only
13 paid PLAINTIFF and Aggrieved Employees for scheduled work hours rather than all hours worked.
14 Based on further information and belief, PLAINTIFF's wage statements demonstrate that his total
15 hours worked are rounded to the nearest whole hour or nearest half hour.

16 48. Based on further information and belief, Aggrieved Employees were required to
17 transport tools, machinery, materials and/or other work equipment to project sites and were not
18 compensated for the time it took to transport such tools/equipment. Based on further information
19 and belief, PLAINTIFF and Aggrieved Employees were required to complete off-the-clock work
20 after completing their scheduled shift, including but not limited to completing work tasks for the
21 assigned projects and/or cleaning the work site. This post-shift work lasted at least 20-30 minutes.
22 Based on further information and belief, DEFENDANTS required Aggrieved Employees to
23 transport tools and/or equipment after their scheduled shift and/or otherwise outside of their
24 scheduled shift time.

25 49. Based on information and belief, DEFENDANTS had and continue to have a
26 continuous policy of paying PLAINTIFF and other Aggrieved Employees for scheduled hours,
27 rather than actual hours worked due to DEFENDANTS' mandated off-the-clock work. PLAINTIFF
28 and other Aggrieved Employees were required to perform pre-shift and post-shift off-the-clock work

1 due to DEFENDANTS' failure to record the true shift start times and shift end times for Aggrieved
2 Employees. Moreover, DEFENDANTS required PLAINTIFF and Aggrieved Employees to perform
3 off-the-clock work in order to prepare machinery and work tools for the day and/or complete other
4 work tasks in preparation for the workday.

5 50. Based on information and belief, DEFENDANTS failed to pay Aggrieved
6 Employees for time spent completing orientation, trainings, policy questionnaires, and/or time spent
7 completing the onboarding process including but not limited to reviewing documents and/or policies
8 provided by DEFENDANTS and/or time spent completing mandated drug testing. Based on
9 information and belief, this work time was completed off-the-clock and was not compensated.

10 51. The above described off-the-clock work policies and practices resulted in work time
11 that was not recorded and was not compensated, depriving PLAINTIFF and other Aggrieved
12 Employees of minimum wages for all hours worked.

13 52. DEFENDANTS' failure to pay for all time worked by virtue of its time-rounding and
14 auto-deduction practices resulted in the underpayment of minimum wages owed to PLAINTIFF and
15 other Aggrieved Employees as well as unpaid overtime wages for those Aggrieved Employees who
16 worked more than eight (8) hours in a day and/or forty hours in a week.

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

21 54. Based on further information and belief, DEFENDANTS failed to incorporate all
22 non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay,
23 and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime
24 rate(s), resulting in the miscalculation and underpayment of overtime wages owed to Aggrieved
25 Employees.

26 55. Based on further information and belief, DEFENDANTS failed to properly blend
27 multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation
28 and underpayment of overtime wages owed to Aggrieved Employees.

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

9 57. DEFENDANTS have failed and continue to fail to keep accurate and complete
10 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
11 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
12 employer control during unpaid meal periods, failure to record the true start and end times of meal
13 periods, shift start times and shift end times, and other off-the-clock work policies and practices
14 described herein. For example, DEFENDANTS did not provide a way for PLAINTIFF and other
15 Aggrieved Employees to record the true start and end times of their work shift(s). Instead,
16 DEFENDANTS required an on-site supervisor/foreman to record the scheduled shift start time and
17 end time for each day worked without regard to the actual hours worked. When PLAINTIFF worked
18 as a mason, his work time was recorded by an onsite foreman. When PLAINTIFF worked in a
19 security position, his work time was recorded by his supervisor. Based on information and belief
20 the supervisor/foreman recorded only the scheduled hours worked and not the actual hours worked.

21 58. DEFENDANTS further failed and continue to fail, to record the true start and end
22 times of PLAINTIFF's and other Aggrieved Employees' meal periods. For example,
23 DEFENDANTS did not provide a way for PLAINTIFF and Aggrieved Employees to record their
24 meal period(s). Instead, an on-site supervisor/foreman recorded the scheduled meal period start and
25 end time without regard to the actual start and end time of the meal period.

26 59. **Failure to Produce Records.** Based on information and belief, DEFENDANTS
27 failed and continue to fail to produce or make available a current or former employee's personnel
28 records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432,

1 and/or the applicable Wage Order. For example, PLAINTIFF sent a request for payroll and
2 personnel records to DEFENDANTS. Yet, DEFENDANTS failed to timely produce complete
3 records within the time periods delineated by California labor law. Based on information and belief,
4 DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records
5 when requested by other Aggrieved Employees, resulting in violations of Labor Code sections
6 226(b)-(c), 1198.5, and 432 and the applicable Wage Order.

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

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

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

20 **63. Statutory Wage Violations.** As described above, DEFENDANTS willfully and
21 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
22 for all hours worked which resulted in the payment of less than the statutorily required wages owed
23 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
24 not limited to, overtime wages and minimum wages, to which they were entitled to under California
25 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
26 Aggrieved Employees lower wages than those they were entitled to while purporting that
27 PLAINTIFF and other Aggrieved Employees were properly paid.

28 **64. Unreimbursed Business Expenses.** Based on information and belief,

1 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
2 direct consequence of the performance of their job duties without providing reimbursement, in
3 violation of Labor Code section 2802. PLAINTIFF and Aggrieved Employees were improperly
4 required to provide and maintain work tools that are supposed to be the responsibility of the
5 employer.

6 65. DEFENDANTS shifted the costs of doing business onto PLAINTIFF and other
7 Aggrieved Employees by requiring them to pay for business expenses, including but not limited to,
8 use of PLAINTIFF's and other Aggrieved Employees' mobile phone and data plan usage and
9 charges. For example, PLAINTIFF received work related calls and messages to his personal phone
10 from managers, supervisors and/or coworkers, including but not limited to calls/messages related to
11 scheduling or project site locations.

12 66. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
13 required to use their personal vehicle for work related purposes including but not limited to
14 transporting tools and equipment to and from a work site. At other times, PLAINTIFF was required
15 to travel from one project site to another (during the same shift) and was not compensated for the
16 cost of using his personal vehicle to travel between project sites.

17 67. Moreover, PLAINTIFF and other Aggrieved Employees were required to supply
18 their own work tools. For example, PLAINTIFF regularly purchased work gloves and was not
19 reimbursed for the cost of gloves. Additionally, PLAINTIFF was required to purchase his own tools
20 including but not limited to a leveler, measuring tape, pencils, wire cutters and helmet. PLAINTIFF
21 used his personal tools to fulfill his job duties and complete projects as directed by DEFENDANTS.

22 68. Based on information and belief, DEFENDANTS did not reimburse for the cost of
23 purchasing and/or maintaining work clothing/uniforms.

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

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

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

13 72. DEFENDANTS' wage statements that it provided to PLAINTIFF and all Aggrieved
14 Employees also failed to indicate the earned gross and net wages earned during the pay period, the
15 correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
16 Aggrieved Employees (by virtue of the automatic deduction for meal periods, failure to record all
17 hours worked, time-rounding policies and practices and other off-the-clock work policies and
18 practices, all described in greater detail *supra*) which results in a violation of Labor Code section
19 226(a).

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

24 74. Separately, based on information and belief, DEFENDANTS violated Labor Code
25 section 226 because the wage statements issued to Aggrieved Employees failed to list the correct
26 name and/or address of the legal entity that is the employer. Moreover, based on information and
27 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the
28 inclusive dates of the pay period for which the employee is being paid.

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

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

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

20 78. DEFENDANTS failed to provide the posting required by these statutes, showing and
21 demonstrating all of the following:

- 22 a. An employee is entitled to accrue, request, and use paid sick leave days.
- 23 b. The amount of sick days provided by this article.
- 24 c. The terms of use of paid sick days.
- 25 d. That retaliation or discrimination against an employee who requests paid sick
26 days or uses paid sick days, or both, is prohibited and that an employee has the
27 right under this article to file a complaint with the Labor Commissioner against
28 an employer who retaliates or discriminates against the employee.

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

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

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

16 82. **Failure to Timely Pay All Wages Upon Separation of Employment .** Based on
17 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
18 were due and owing upon termination or resignation. Based on information and belief,
19 DEFENDANTS provide wages to Aggrieved Employees on the regular pay day without regard to
20 the timing requirements of Labor Code sections 201-202.

21 83. Upon separation of employment, Aggrieved Employees' final paychecks were not
22 timely provided and/or were not timely provided with all owed vacation pay. Moreover, Aggrieved
23 Employees' final paychecks, once provided, did not include all wages owed as they were devoid of,
24 including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation
25 pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

26 84. These violations subject DEFENDANTS to civil penalties under Labor Code section
27 203, 210, and/or 256.

28 85. **Unlawful Inquiries into Salary History.** Based on information and belief,

1 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal
2 their salary history when applying for employment with DEFENDANTS. For example, when
3 PLAINTIFF applied for employment with DEFENDANTS, PLAINTIFF's application requested,
4 among other things, the following information: Name and address of former employer, length of
5 former employment relationship, and the "start" wage and "final" wage of the former employment
6 relationship. Based on information and belief, DEFENDANTS required other Aggrieved Employees
7 to disclose the same or similar information, in violation of Labor Code section 432.3. Moreover, by
8 requiring Aggrieved Employees to disclose prior salary information in a written application for
9 employment, DEFENDANTS violated Labor Code section 432.5, by requiring PLAINTIFF and
10 Aggrieved Employees to agree in writing to disclose their salary history as a condition of obtaining
11 employment with DEFENDANTS, in violation of California law.

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

13 Unlawful Financial and Criminal Background Checks

14 86. Based on information and belief, DEFENDANTS required Aggrieved Employees to
15 agree in writing to unlawful conditions of employment including but not limited to unlawful
16 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
17 violation of Labor Code section 432.5.

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

23 88. Based on information and belief, DEFENDANTS also required Aggrieved
24 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
25 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
26 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
27 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*)

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

1 agree in writing to a background check which failed to abide by the requirements set forth in CA
2 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
3 failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of
4 extraneous information, failing to provide a lawful purpose for the background check, failing to
5 provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which
6 the individual could request a copy of the report, and failing to properly obtain authorization or
7 consent to such a background check, and thus was an unlawful background check.

8 90. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
9 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
10 section 432.5.

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

16 92. Based on further information and belief, DEFENDANTS knew that requiring
17 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
18 condition of obtaining and/or holding employment was unlawful.

19 93. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
20 condition of employment, DEFENDANTS violated Labor Code section 432.5.

21 Unlawful Inquires into Criminal History

22 94. Labor Code section 432.7 prohibits an employer from asking applicants about past
23 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
24 information and belief, DEFENDANTS asked PLAINTIFF and Aggrieved Employees about arrests
25 not resulting in convictions on its employment application, in violation of California law. For
26 example, in the application for employment, DEFENDANTS required that PLAINTIFF answer the
27 following question, "Have you ever been arrested for any matters for which you currently are out
28 on bail or on your own recognizance pending trial?"

95. Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked PLAINTIFF and Aggrieved Employees about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law. For example, in the application for employment, DEFENDANTS required that PLAINTIFF answer a question which read in relevant part, “Have you ever plead guilty or no contest to, or been convicted of any criminal offense ...”

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

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

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

FIRST CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS

2698, *ET SEQ.*

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

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

Failure to Keep Accurate Records

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

101. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate

1 and complete records as required by law, including but not limited to the following records: total
2 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
3 Aggrieved Employees began and ended each work period, time records of meal periods, and
4 accurate itemized wage statements.

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

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

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

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

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

1 timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)
2 penalty from the employer. Lab. Code section 226(f).

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

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

16 **Meal Period Violations**

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

22 108. Employers must also provide employees with a second duty-free, uninterrupted thirty
23 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
24 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
25 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
26 hours but no more than six (6) hours, the required meal period may be waived by mutual consent
27 of the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
28 hours but no more than twelve (12) hours, the required second meal period may be waived by

1 mutual consent of the employer and employee, but only if the first meal period was not waived.
2 *Ibid.*

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

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

18 111. DEFENDANTS have a consistent policy and/or practice of not providing lawful
19 meal periods to PLAINTIFF and all Aggrieved Employees and/or providing compensation in lieu
20 thereof. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
21 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
22 being forced to take late meal periods, interrupted meal periods, shortened meal periods, and/or
23 work through part or all their meal periods due to the nature and constraints of their job duties,
24 understaffing, and/or commentary from supervisors pressuring them to take non-compliant meal
25 breaks and/or skip meal periods completely.

26 112. Based on information and belief, DEFENDANTS had and continue to have a
27 continuous policy of rounding the start and end times of employees’ meal periods and/or
28 automatically deducting thirty minutes per shift despite having actual and/or constructive

1 knowledge that PLAINTIFF and Aggrieved Employees did not receive compliant meal periods.

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

4 114. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
5 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
6 practices, failure to relieve PLAINTIFF and other Aggrieved Employees of all duties and employer
7 control during meal periods, and mandated pre-shift off-the-clock work resulted in the denial of
8 timely, compliant meal periods in violation of California's meal period laws.

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

14 116. These unlawful meal period policies and practices result in violations of Labor Code
15 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
16 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
17 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
18 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

19 **Rest Period Violations**

20 117. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
21 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
22 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
23 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
24 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
25 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up
26 to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.*
27 at 1029). The rest period requirement obligates employers to permit and authorize employees to
28 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish

1 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
2 Cal.5th 257. If the employer fails to provide any required rest period, the employer must pay the
3 employee one hour of pay at the employee's regular rate of compensation for each workday the
4 employer did not provide at least one legally required rest period, pursuant to Labor Code section
5 226.7, and applicable IWC Wage Order, §12(B).

6 118. As explained above, PLAINTIFF and other Aggrieved Employees did not receive
7 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.
8 Any purported rest periods were interrupted, cut short, on duty, and/or late. PLAINTIFF and other
9 Aggrieved Employees were pressured to complete their work such that rest periods were only taken
10 once tasks were completed/as time permitted.

11 119. DEFENDANTS also failed to provide PLAINTIFF and Aggrieved Employees with
12 legally compliant recovery/cooldown periods to prevent illness as required by law.

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

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

22 **Cooldown Recovery Period Violations**

23 122. California Code of Regulations, Title 8, section 3395 mandates that all employers
24 with "outdoor places of employment" implement a heat illness prevention program that includes,
25 among other requirements, providing workers "cool-down" periods of at least five minutes in the
26 shade. Specifically, section 3395 provides that "employees shall be allowed and encouraged to take
27 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
28 need to do so to protect themselves from overheating" and that "such access to shade shall be

1 permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide
2 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
3 the employee’s regular rate of compensation for each workday that the meal or rest or recovery
4 period is not provided.

5 123. PLAINTIFF and Aggrieved Employees were required to spend multiple hours at a
6 time outdoors in significantly high temperature heat conditions. DEFENDANTS failed to provide
7 proper heat illness prevention training and/or heat illness policies/practices/programs as required
8 by California’s Heat Illness Prevention statute, Title 8 Section 3395(d). DEFENDANTS failed to
9 provide adequate access to drinking water as required by California’s Heat Illness Prevention
10 statute, Title 8 Section 3395(c). Moreover, DEFENDANTS maintained a policy and practice of not
11 permitting necessary time for cooldown recovery breaks, and as a result, Aggrieved Employees
12 were required to remain outdoors with little to no access to shade for extended periods of time. In
13 addition, DEFENDANTS, failed to pay PLAINTIFF and other Aggrieved Employees with an
14 additional hour of pay at the regular rate of pay for each missed cooldown recovery period.

15 **Minimum and Overtime Wage Violations**

16 124. California law provides that employees in California must be paid for all hours
17 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
18 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
19 The minimum wage standard applies to each hour employees worked for which they were not paid.
20 Therefore, an employer’s failure to pay for any particular hour worked by an employee is unlawful
21 even if averaging an employee’s total pay over all hours worked, paid or not, results in an average
22 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

1 126. As alleged herein, PLAINTIFF and Aggrieved Employees regularly worked
2 minimum and overtime hours for which they were not compensated as required by California law.
3 DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees for all hours
4 worked by virtue of DEFENDANTS' failure to record all hours worked, automatic deduction for
5 meal periods, time rounding policies and practices for meal periods, start shift times and end times,
6 and mandated off-the-clock work described above resulted in the failure to account for all hours
7 worked and thus the denial of minimum wages as well as overtime wages owed to Aggrieved
8 Employees who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

9 127. DEFENDANTS had and continue to have a continuous policy of failing to pay
10 PLAINTIFF and Aggrieved Employees for all hours worked.

11 128. Based on information and belief, DEFENDANTS had and continue to have a
12 continuous policy of paying PLAINTIFF and Aggrieved Employees for scheduled hours, rather than
13 actual hours worked. Based on information and belief, DEFENDANTS had and continue to have a
14 continuous policy of rounding PLAINTIFF and Aggrieved Employees shift start and shift end times,
15 and meal period start and end times.

16 129. Based on information and belief, DEFENDANTS had and continue to have a
17 continuous policy of requiring PLAINTIFF and the Aggrieved Employees to perform work prior to
18 beginning their scheduled shifts and/or after completing their shifts and/or otherwise outside of their
19 scheduled shift times and during uncompensated meal periods.

20 130. Based on information and belief, DEFENDANTS had actual or constructive
21 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
22 meal periods, failing to relieve employees of all duties and employer control during unpaid meal
23 periods, policy and practice of payment according to scheduled time rather than actual work time,
24 resulted in the underpayment of minimum and overtime wages owed to PLAINTIFF and other
25 Aggrieved Employees.

26 131. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
27 and unpaid overtime wages owed to PLAINTIFF and those Aggrieved Employees that worked
28 more than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid double

1 time wages.

2 132. Moreover, based in information and belief, DEFENDANTS failed to pay proper
3 overtime rates to PLAINTIFF and Aggrieved Employees due to DEFENDANTS' failure to
4 incorporate all non-discretionary remuneration, including but not limited to, shift differential pay,
5 bonus pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the
6 owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed
7 to PLAINTIFF and Aggrieved Employees.

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

12 134. Based on further information and belief, DEFENDANTS failed to properly blend
13 multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation
14 and underpayment of overtime wages owed to Aggrieved Employees.

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

19 **Statutory Wage Violations**

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

1 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
2 Labor Code § 2699(f)-(g).

3 **Refusal to Make Payment**

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

12 **Business Expense Violations**

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

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

26
27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further,
2 “any contract or agreement, express or implied, made by any employee to waive the benefits of
3 this article or any part thereof, is null and void, and this article shall not deprive any employee or
4 his personal representative of any right or remedy to which he is entitled to under the laws of this
5 State.” *See* Cal. Lab. Code section 2804.

6 140. As described above, PLAINTIFF and the Aggrieved Employees were improperly
7 required to pay for business expenses that are legally the responsibility of the employer, including
8 but not limited to, cell phone/data plan usage and charges, costs of using a personal vehicle, costs
9 of using personal tools and protective equipment, and costs associated with the purchase and/or
10 maintenance of uniforms.

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

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

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

22 **Wage Statement Violations**

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

1 number or an employee identification number other than a social security number; (8) the name
2 and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate. Lab.
4 Code § 226.

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

13 146. Moreover, due to violations detailed above, including but not limited to,
14 DEFENDANTS' failure to pay minimum and overtime wages for all hours worked, failure to pay
15 all sick leave wages at the proper rates, and failure to provide meal and rest break premiums,
16 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
17 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
18 the earned gross and net wages earned and the correct applicable rates of pay for all hours worked.
19 As described above, DEFENDANTS also failed to incorporate all forms of non-discretionary
20 compensation earned during the pay period into regular rate of pay for purposes of calculating the
21 overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of overtime
22 worked by PLAINTIFF and other Aggrieved Employees.

23 147. Moreover, wage statements issued by DEFENDANTS failed to indicate the earned
24 gross and net wages earned during the pay period, the correct applicable rates of pay for all hours
25 worked, and the "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of the
26 automatic deduction for meal periods, failure to record all hours worked, time-rounding policies and
27 practices and other off-the-clock work policies and practices, all described in greater detail *supra*)
28 which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage

1 statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon*
2 *Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

3 148. DEFENDANTS' failure to accurately list all hours worked on all wage statements
4 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
5 Employees over whether they received all wages owed to them.

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

9 150. Based on further information and belief, DEFENDANTS failed to list the inclusive
10 dates of the pay period for which the employee is being paid.

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

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

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

20 **Standard Conditions of Labor Violations**

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

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 **Sick Leave Violations**

2 155. DEFENDANTS violated California's paid sick leave laws including, Labor Code
3 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
4 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
5 DEFENDANTS' failure to account for actual hours worked (as a result of automatic deduction
6 policies and practices for meal periods, time rounding policies and practices for meal period start
7 times, meal period end times, shift start times, and shift end times, and/or other required off-the-
8 clock work described above), and/or failure to incorporate multiple rates of pay and/or all forms of
9 non-discretionary remuneration including but not limited to, non-discretionary bonuses, shift
10 differential pay, commission and/or piece-rate compensation and/or other non-discretionary
11 compensation into the sick leave pay rate calculation.

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

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

21 158. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
22 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
23 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
24 were entitled to the maximum number of hours accruable.

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

1 wages.

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

3 161. On information and belief, PLAINTIFF alleges that all of these practices were
4 experienced and continue to be experienced by other Aggrieved Employees.

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

8 **Untimely Payment of Final Wages**

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

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

22 165. Based on information and belief, DEFENDANTS fail to timely pay final wages to
23 Aggrieved Employees upon separation of employment in violation of Labor Code sections 201-
24 202 and/or did not include all owed vacation pay and/or fail to timely provide final wages with all
25 owed vacation and/or paid time off. Based on information and belief, DEFENDANTS provide final
26 wages to Aggrieved Employees on the regular pay day without regard to the timing requirements
27 of Labor Code sections 201-202.

28 166. Moreover, final paychecks, once provided to Aggrieved Employees did not include

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

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

7 **Unlawful Inquiries into Salary History**

8 168. Labor code section 432.3 provides in part “(b) An employer shall not, orally or in
9 writing, personally or through an agent, seek salary history information, including compensation
10 and benefits, about an applicant for employment.” As explained above, DEFENDANTS have a
11 policy and/or practice of unlawfully asking Aggrieved Employees to reveal their prior salary
12 history when applying for employment with DEFENDANTS, in violation of Labor Code section
13 432.3. For example, when PLAINTIFF applied for employment with DEFENDANTS, the
14 application requested, among other things, the following information: Name and address of former
15 employer, length of former employment relationship, and the “start” wage and “final” wage of the
16 former employment relationship.

17 169. By requiring Aggrieved Employees to disclose prior salary information in a written
18 application for employment, DEFENDANTS violated Labor Code section 432.5 by requiring
19 Aggrieved Employees to agree in writing to disclose their salary history as a condition of obtaining
20 employment with DEFENDANTS, in violation of California law.

21 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

28 171. The California Labor Code places certain procedural and substantive limits on an

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

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

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

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

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

28 176. By requiring that Aggrieved Employees sign off on the illegal background and/or

1 financial checks, DEFENDANTS violated Labor Code section 432.5.

2 Unlawful Inquires into Criminal History

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

7 178. As explained above, DEFENDANTS, in violation of California law, including but
8 not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"),
9 asked PLAINTIFF and Aggrieved Employees about convictions prior to extending an offer of
10 employment and/or otherwise impermissibly inquired into criminal history on its employment
11 application in violation of California law. For example, when applying for employment with
12 DEFENDANTS, PLAINTIFF was required to answer the following questions on the employment
13 application: "Have you ever been arrested for any matters for which you currently are out on bail
14 or on your own recognizance pending trial?" and "Have you ever plead guilty or no contest to, or
15 been convicted of any criminal offense ..."

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

21 180. Under the provisions of PAGA and the above mentioned Labor Code sections,
22 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
23 245-248.5, 256, 432, 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
24 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
25 interpretations of these laws by California Courts and administrative bodies, as well as any other
26 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 27 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
28 relevant California Labor Code provisions listed herein only if permitted by the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGA statute, pursuant to Labor Code section 2699(a); and

- b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code section 2699(f).
- c. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a party to this action or not.

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

PRAYER FOR RELIEF

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

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

Dated: August 3, 2022

CROSNER LEGAL, PC

By: 

Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Blake R. Jones, Esq.
Jonathan Stilz, Esq.
Attorneys for Plaintiff,
LEONEL HERNANDEZ

EXHIBIT

1



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

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

May 4, 2022

VIA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Karen Schnurr
Agent for Service of Process for:
Design Masonry Inc.
20703 Santa Clara St.
Santa Clarita, CA 91351

Design Masonry Inc.
Attn: Human Resources/ Legal Department
20703 Santa Clara St.
Santa Clarita, CA 91351

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Design Masonry, Inc.
Date: May 4, 2022
Subject: *Leonel Hernandez v. Design Masonry Inc.*

Introduction

This office represents COMPLAINANT, Leonel Hernandez (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 entity: Design Masonry, Inc., (hereinafter, this entity, and its managing agents are referred to collectively 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 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 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 the agent for service of process as provided to the California Secretary of State and/or the principal mailing address 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, 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 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 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of the 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. 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, 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1,

1198, 1198.3, 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 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 and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code Section 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 an employer(s) who violated COMPLAINANT 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, the 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 sections 203, 226, 226.7, 1194 and 2802 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, manages or otherwise operates as a masonry contractor in the construction industry. EMPLOYER offers masonry services including but not limited to retaining walls, fence walls, brick and stone veneer, and pavers for commercial and residential projects.¹ At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and/or the applicable California Industrial Welfare Commission (“IWC”) Wage Order.

COMPLAINANT worked for EMPLOYER as a non-exempt employee in a mason and/or similar title/position from in or around August 2019 through in or around June 2021. As a mason, COMPLAINANT worked at various project locations including but not limited to projects completed in Los Angeles, Simi Valley, Camarillo, Santa Clarita, Palmdale, Victorville and others. COMPLAINANT then worked for EMPLOYER in a security/similar title or position until in or around October 2021 or November 2021 at which point COMPLAINANT went on leave. As a security, COMPLAINANT regularly worked out of EMPLOYER’s facility in Santa Clarita, California. At all relevant times, COMPLAINANT was a full-time, non-exempt employee that was typically scheduled to work at least eight (8) hours per shift, at least five (5) days per week.

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

¹ See <https://designmasonry.com/>. Last visited on May 4, 2022.

AGGRIEVED EMPLOYEES at least minimum wages 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 or rest breaks or recovery periods, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the employee's 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 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) made unlawful salary inquiries; (13) conducted and continues to conduct illegal background criminal and/or financial checks as a condition of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT EMPLOYEES' hire or maintaining their employment; and (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 or 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. 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. The applicable IWC Wage Order(s), section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, 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.

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, automatic meal break deductions, and practices, and/or other off-the-clock work policies and practices described below.

EMPLOYER further 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.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts. For example, EMPLOYER did not provide a way for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to record the true start and end times of their work shift(s). Instead, EMPLOYER required an on-site supervisor/foreman to record the scheduled shift start time and end time for each day worked without regard to the actual hours worked. When COMPLAINANT worked as a mason, his work time was recorded by an onsite foreman. When COMPLAINANT worked in a security position, his work time was recorded by his supervisor. Based on information and belief the supervisor/foreman recorded only the scheduled hours worked and not the actual hours worked.

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. For example, EMPLOYER did not provide a way for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to record their meal period(s). Instead, an on-site supervisor/foreman recorded the scheduled meal period start and end time without regard to the actual start and end time of the meal period.

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 the applicable Wage Order, 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

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

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

Time and Pay Records

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

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

Personnel Records

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

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to produce complete records and/or failed to 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.*

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 Wage Order(s), 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 improper 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 section 226.7; all applicable IWC Wage Orders, section 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 consistently worked shifts of five and a one-half (5 ½) hours or more, and were entitled to a meal period.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES did not receive legally compliant thirty (30) minute first meal breaks. COMPLAINANT and 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, shortened meal periods, and/or work through part or all their meal periods due to the nature and constraints of their job duties, understaffing, and/or commentary from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. For example, COMPLAINANT's meal periods were regularly interrupted, late, and/or cut short due to his need

to complete his job duties and/or complete components of the assigned project, including but not limited to receiving materials (including but not limited to cement) at the work site and/or completing work tasks before the cement or other building materials solidified.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES regularly performed pre-shift off-the-clock work in order to prepare machinery and work tools for the day and/or complete other work tasks in preparation for the workday. This pre-shift off-the-clock work lasted at least five minutes each day. This work time was not recorded, was not compensated and was not taken into account when scheduling COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, at times, meal periods were late, in part due to this unaccounted pre-shift work time.

Based on information and belief, EMPLOYER required NON-EXEMPT EMPLOYEES to transport tools and/or work equipment to project sites. Based on information and belief, this work time was off-the-clock, unpaid, and not accounted for when scheduling NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, meal periods were late, in part due to this unaccounted pre-shift work time.

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

As explained herein, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut short due to their need to complete assigned job duties, mandated pre-shift off-the-clock work, and/or work-related interruptions during purported meal periods.

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

Despite failing to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for these missed/unlawful meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive compliant meal periods.

EMPLOYER further failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on further information and belief, EMPLOYER illegally rounded the start and end times of 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. For example, time records for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES show that meal periods were regularly recorded at the same time for exactly thirty minutes, regardless of whether a lawful meal period

was provided at the recorded time. Despite failing to record the true start and end times of NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods, EMPLOYER systematically deducted thirty (30) minutes per shift irrespective of whether a full thirty (30) minute meal period was provided.

Based on further information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the 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 auto-deduction policies and practices resulted in the denial of 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, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal period before the end of the tenth hour of work. Based on further information and belief, EMPLOYER only provided a single meal period per shift, regardless of the number of hours worked, and that single meal period was non-compliant.

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 proper meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a proper 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, shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate or 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 the applicable Wage Order, section 11(A), (B) 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 section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); Applicable IWC Wage Order, section 20 (establishing that "in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of 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, 1199, 226.6, 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, section 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 a 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 section 226.7; all applicable IWC Wage Orders, section 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 workday that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with lawful 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, any purported rest periods were interrupted, cut short, on duty, and/or late due to the nature and constraints of COMPLAINANTS' and NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, understaffing, and/or commentary from supervisors pressuring them to skip rest breaks completely and/or take non-compliant rest periods.

Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties/ assigned tasks such that rest breaks were only taken once jobs were completed/as time permitted. For example, COMPLAINANT regular worked at least eight hours per shift but was rarely provided with two compliant rest periods. Instead, COMPLAINANT was often only afforded the opportunity to take a single rest period and that rest period was not compliant, as it was often late, interrupted, and/or on duty. At times, COMPLAINANT worked a full shift of eight hours or more without a single compliant rest period.

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, other NON-EXEMPT AGGRIEVED EMPLOYEES were also interrupted during their purported ten-minute rest period(s) and/or were not afforded the opportunity to take compliant rest periods.

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

Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. Furthermore, EMPLOYER failed to pay a rest period premium for each day in which there was a missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. 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 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 proper 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, shift differential pay, bonuses, 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 the applicable Wage Order, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section §§ 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.⁴

Cooldown Recovery Period Violations: California Code of Regulations, Title 8, section 3395 mandates that all employers with “outdoor places of employment” implement a heat illness prevention program that includes, among other requirements, providing workers “cool-down” periods of at least five minutes in the shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the need to do so to protect themselves from overheating” and that “such access to shade shall be permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide an employee a recovery period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

⁴ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Applicable IWC Wage section 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 NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend multiple hours at a time outdoors in significantly high temperature heat conditions. EMPLOYER failed to provide proper heat illness prevention training and/or heat illness policies/practices/programs as required by California's Heat Illness Prevention statute, Title 8 Section 3395(d). EMPLOYER failed to provide adequate access to drinking water as required by California's Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, EMPLOYER maintained a policy and practice of not permitting necessary time for cooldown recovery breaks, and as a result, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain outdoors with little to no access to shade for extended periods of time. In addition, EMPLOYER, failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with an additional hour of pay at COMPLAINANT's regular rate of pay for each missed cooldown recovery period.

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." *Cal. Lab. Code* § 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. Therefore, 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.

EMPLOYER failed to compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deductions and time rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated pre-shift off-the-clock work policies, other off-the-clock work policies and/or practices and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

As explained above, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely off duty, thirty-minute, uninterrupted meal periods. Based on information and belief, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that the purported meal periods were short, not taken, interrupted, or not relieved of all duties and employer control.

Moreover, EMPLOYER rounded the start and end times of employee meal periods and true shift start and end times resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all hours worked. For example, EMPLOYER compensated COMPLAINANT only for scheduled hours worked rather than all hours actually worked. EMPLOYER's time records for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES recorded the scheduled shift start time and shift end time. As such, the recorded shift start time and shift end time were always rounded to the nearest whole hour or the nearest half hour. Likewise, meal period start times and end times were always rounded to the nearest whole hour or half hour. Based on information and belief, EMPLOYER only paid COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for scheduled work hours rather than all hours worked. Based on further information and belief, COMPLAINANT's wage statements demonstrate that his total hours worked are rounded to the nearest whole hour or nearest half hour.

EMPLOYER's failure to pay for all time worked by virtue of its time-rounding and auto-deduction practices 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 forty hours in a week.

Based on information and belief, EMPLOYER had and continues to have a continuous policy of paying COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for scheduled hours, rather than actual hours worked due to EMPLOYER's mandated off-the-clock work. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform pre-shift and post-shift off-the-clock work due to EMPLOYER's failure to record the true shift start times and shift end times for NON-EXEMPT AGGRIEVED EMPLOYEES. Moreover, EMPLOYER required COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES to perform off-the-clock work in order to prepare machinery and work tools for the day and/or complete other work tasks in preparation for the workday.

Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to transport tools, machinery, materials and/or other work equipment to project sites and were not compensated for the time it took to transport such tools/equipment. Based on further information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work after completing their scheduled shift, including but not limited to completing work tasks for the assigned projects and/or cleaning the work site. This post-shift work lasted at least 20-30 minutes. Based on further information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to transport tools and/or equipment after their scheduled shift and/or otherwise outside of their scheduled shift time.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time spent completing orientation, trainings, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing documents and/or

policies provided by EMPLOYER and/or time spent completing mandated drug testing. Based on information and belief, this work time was completed off-the-clock and was not compensated.

The above described off-the-clock work policies and practices resulted in work time that was not recorded and was not compensated, depriving COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum wages for all hours worked.

EMPLOYER's time rounding, automatic deduction policies and practices for meal periods, as well as mandated off-the-clock work described herein resulted in a failure to account for all hours worked and deprived COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all owed minimum wages and overtime wages, and further resulted in record keeping violations.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices, failure to provide off-duty meal periods, and other mandated off-the-clock work described above 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 the applicable Wage Order, 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.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 section 510; All applicable IWC Wage Orders, section 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.*

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

Namely, EMPLOYER's failure to record all hours worked, automatic deduction for meal periods, time rounding policies and practices for meal periods, start shift times and end times, and mandated

⁵ See Lab. Code section 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); Applicable IWC Wage Order, section 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").

off-the-clock work described above resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week. Based on information and belief, EMPLOYER failed 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 further 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 NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on further information and belief, EMPLOYER failed to properly blend multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Violation of California Labor Code Sections 245-248.5: Based on information and belief, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all 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 automatic deduction policies and practices for meal periods, time rounding policies and practices for meal period start times, meal period end times, shift start times, and shift end times, and/or other required off-the-clock work described above) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary shift differential pay and bonuses, and/or other non-discretionary compensation into the sick leave pay rate calculation.

⁶ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code section 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order, section 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").

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.

EMPLOYER further failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice.

EMPLOYER failed to provide the posting required by these statutes, showing and demonstrating all of the following:

1. An employee is entitled to accrue, request, and use paid sick leave days.
2. The amount of sick days provided by this article.
3. The terms of use of paid sick days.
4. That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

In addition, based on information and belief, 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.

Throughout the relevant time period, EMPLOYER failed to provide notice of the sick leave amount balance left for COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, and thus affected their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separation, 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 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 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 also unlawfully retained and continues to retain paid sick leave that should have been paid and was not because 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 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.

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 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 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.

⁷ Labor Code section 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).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with lawful meal and rest periods and premium wages, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES 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).

Moreover, EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES failed to among other things, indicate 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 the automatic deduction for meal periods, failure to record all hours worked, time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*) 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).

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 the 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.

Because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER violated California Labor Code section 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.

Separately, based on information and belief, EMPLOYER violated Labor Code section 226 because the wage statements issued to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES failed to list the correct name and/or address of the legal entity that is the employer. Moreover, based on information and belief, EMPLOYER issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that failed to list the inclusive dates of the pay period for which the employee is being paid. 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, including but not limited to the name and/or address of the legal entity that is the employer and/or the inclusive dates of the pay period.

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 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 failing to pay NON-EXEMPT AGGRIEVED 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 § 210. Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute 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 with respect to meal periods, rest periods, recordkeeping provisions, minimum wages, 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: California 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 minimum wages and overtime wages which resulted in the payment of less than statutorily required wages 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 all 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. COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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

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

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 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 provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES on the regular pay day without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, 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. Moreover, 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, and 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 NON-EXEMPT AGGRIEVED EMPLOYEE and each 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

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”).

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. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. 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.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of EMPLOYER.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for EMPLOYER's business expenses, including but not limited to, use of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' mobile phone and data plan usage and charges. Based on information and belief, COMPLAINANT received work related calls and messages to his personal phone from managers, supervisors and/or coworkers, including but not limited to calls/messages related to scheduling or project site locations.

Based on information and belief, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were required to use their personal vehicle for work related purposes including but not limited to transporting tools and equipment to and from a work site. At other times, COMPLAINANT was required to travel from one project site to another and was not compensated for the cost of using his personal vehicle to travel between project sites.

Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were required to supply their own work tools. For example, COMPLAINANT regularly purchased work gloves and was not reimbursed for the cost of gloves. Moreover, COMPLAINANT was required to purchase his own tools including but not limited to a leveler, measuring tape, pencils, wire cutters and helmet. COMPLAINANT used his personal tools to fulfill his job duties and complete projects as directed by EMPLOYER.

Based on information and belief, EMPLOYER did not reimburse for the cost of purchasing and/or maintaining work clothing/uniforms.

COMPLAINANT and other 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, cell phone/data plan charges incurred as a result of being required to use their personal cell phones for work-related purposes, costs associated with using a personal vehicle for work-related purposes, and the cost of purchasing work tools as described above, and/or purchasing work clothing/uniforms.

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

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

Unlawful Inquiries into Salary History

Labor code section 432.3 provides in part "(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment." Based on information and belief, EMPLOYER has a policy and/or practice of unlawfully asking NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to reveal their salary history when applying for employment with EMPLOYER. For example, when COMPLAINANT applied for employment with EMPLOYER, COMPLAINANT's application requested, among other things, the following information: Name and address of former employer, length of former employment relationship, and the "start" wage and "final" wage of the former employment relationship. Based on information and belief, EMPLOYER required other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose the same or similar information, in violation of Labor Code section 432.3.

Moreover, by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose prior salary information in a written application for employment, EMPLOYER violated Labor Code section 432.5 by requiring NON-EXEMPT

AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose their salary history as a condition of obtaining employment with EMPLOYER, in violation of California law.

Unlawful Agreements/ Unlawful Criminal and Financial Background Checks:

Unlawful Financial and Criminal Background Checks:

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 violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER required 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.

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

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

Based on further 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 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to these unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By having NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES sign off on the illegal background and financial checks, EMPLOYER also violated Labor Code section 432.5 (stating 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.”).

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 COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law. For example, in the application for employment, EMPLOYER required COMPLAINANT to answer the following question, “Have you ever been arrested for any matters for which you currently are out on bail or on your own recognizance pending trial?”

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 COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law. For example, in the application for employment, EMPLOYER required COMPLAINANT to answer a question which read in relevant part, “Have you ever plead guilty or no contest to, or been convicted of any criminal offense ...”

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, 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, and the applicable Wage Order(s) 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 section 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 requirement created by Labor Code sections 2699, 2699.3(a), 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 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,

Zachary M. Crosner

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC