

JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff CHEYNE CASTILLO
on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CHEYNE CASTILLO, on behalf of the State
of California and all Aggrieved Employees,

Plaintiff,

v.

RESER'S FINE FOODS, INC., an Oregon
Corporation; and DOES 1-100, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
3/27/2025 11:37:35 AM

Clerk of the Superior Court
By J. Tinajero ,Deputy Clerk

Case No.: 25CL016273C

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

1 Plaintiff, CHEYNE CASTILLO, (“PLAINTIFF”), on behalf of the State of California and
2 all Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 RESER’S FINE FOODS, INC., an Oregon Corporation; and DOES 1-100, inclusive, (collectively
4 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
5 as follows:

6 **INTRODUCTION**

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

11 **JURISDICTION AND VENUE**

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

14 3. Venue is proper in this judicial district and the County of San Diego pursuant to
15 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
16 this judicial district, DEFENDANTS assigned PLAINTIFF to work in this judicial district, and
17 conduct alleged by PLAINTIFF herein occurred in this judicial district. *See also Crestwood*
18 *Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is
19 proper in any county where the defendants committed Labor Code violations against some of its
20 employees). Venue is also proper pursuant to section 393 of the California Code of Civil Procedure
21 because the cause, or some part of the cause, arose in the County of San Diego.

22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
24 California and a citizen of the State of California.

25 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
26 title(s) of machine operator and/or a similar title(s) and/or job position(s) from in or around August
27 2023 through in or around November 2024. PLAINTIFF regularly worked at least approximately
28 ten (10) to twelve (12) hours per day, at least six (6) days per week.

1 6. DEFENDANTS assigned PLAINTIFF to work at DEFENDANTS' warehouse
2 distribution center(s) and/or other facilities located in San Diego County, California, which operates
3 under including but not limited to the following name(s): "Fresh Creative Foods." PLAINTIFF
4 worked as a machine operator and/or a similar job title/job position in DEFENDANTS' warehouse
5 distribution center(s) and/or other facilities and in that capacity played a direct and necessary role
6 in the transportation of DEFENDANTS' goods to destinations throughout the United States and was
7 thereby actively engaged with the transportation of goods in interstate commerce.

8 7. Defendant, RESER'S FINE FOODS, INC., is an Oregon Corporation that, at all
9 relevant times, was authorized to do business within the State of California and is doing business in
10 the State of California.

11 8. DEFENDANTS own, operate, manage and/or staff its employees to work at
12 warehouse distribution centers, warehouses, manufacturing centers, facilities and/or other
13 location(s) in California, including but not limited to the warehouse distribution centers,
14 warehouses, manufacturing centers in including but not limited to, Vista, California.
15 DEFENDANTS specialize in including but not limited to, the manufacturing of fresh, high-quality
16 refrigerated foods. DEFENDANTS operate business under including but not limited to, the
17 following name(s): "Reser's," "Reser's Fine Foods" "Fresh Creative Foods," "Fresh Creative
18 Foods, Inc.," "Main St. Bistro," "Stonemill Kitchen," "Don Pancho Authentic Mexican Foods,"
19 "Reser's Baja Café," "Baja Café," and/or "Reser's Foodservice."¹ DEFENDANTS distribute their
20 food products nationwide.²

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

27
28 ¹ See <https://www.resers.com/>. Last visited on March 25, 2025.

² See <https://www.freshcreativefoods.com/speed-to-market3> Last visited on March 26, 2025.

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

JOINT LIABILITY

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

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

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

21 14. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
22 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
23 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
24 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
25 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
26 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
27 Employees.

28 15. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a

1 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
2 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
3 working conditions that were distributed to, and/or applied to PLAINTIFF and the Aggrieved
4 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
5 PLAINTIFF and the Aggrieved Employees in a uniform manner. DEFENDANTS collectively
6 represented to PLAINTIFF and the Aggrieved Employees that each was an "at-will" employee of
7 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
8 and Aggrieved Employees' employment with or without cause. Upon information and belief,
9 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
10 writing the details of their compensation, and the manner in which they were to take meal and rest
11 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
12 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
13 collectively would evaluate the wage rates of PLAINTIFF and Aggrieved Employees.

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

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

22 **PAGA ALLEGATIONS**

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

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

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

19. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory limitations period and suffered all of the Labor Code violations set forth herein. Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is affected by all of the alleged violations.

COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS

20. PLAINTIFF, on January 17, 2025, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via certified mail.

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

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

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

1 **FACTUAL ALLEGATIONS**

2 24. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
3 worked for DEFENDANTS in the State of California. At all times referenced herein,
4 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees and suffered and/or
5 permitted them to work.

6 25. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
7 title(s) of machine operator and/or a similar title(s) and/or job position(s) from in or around August
8 2023 through in or around November 2024.

9 26. PLAINTIFF regularly worked at least approximately ten (10) to twelve (12) hours
10 per day, at least six (6) days per week.

11 27. DEFENDANTS assigned PLAINTIFF to work at DEFENDANTS' warehouse
12 distribution center(s) and/or other facilities located in Vista, California which operates under
13 including but not limited to the following name(s): "Fresh Creative Foods."

14 28. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
15 DEFENDANTS as hours worked. Based on information and belief, PLAINTIFF and other
16 Aggrieved Employees also earned non-discretionary compensation, such as, but not limited to, non-
17 discretionary bonus/ incentive pay, shift differential pay and/or other non-discretionary
18 compensation.

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

25 30. Based on information and belief, DEFENDANTS implemented a policy and/or
26 practice of rounding meal period start and end times and/or automatically deducting at least thirty
27 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
28 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during

1 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
2 PLAINTIFF and Aggrieved Employees of all wages owed.

3 31. Based on information and belief, Aggrieved Employees were not paid for all hours
4 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
5 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

6 32. For example, based on information and belief, at times, PLAINTIFF and other
7 Aggrieved Employees were pressured to complete work tasks prior to clocking in for the start of
8 their shifts, after clocking out for the end of their shifts, and/or during unpaid meal periods including
9 but not limited to, gathering/returning work-related equipment/safety gear, make any necessary
10 adjustments to tools/equipment, perform maintenance/cleaning tasks, donning/doffing work
11 clothing/work shoes/boots/uniforms/protective equipment, undergo security screenings,
12 make/respond to work-related communications and/or complete other work tasks off-the-clock,
13 however, DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees for
14 all time spent completing these/other work-related tasks, resulting in DEFENDANTS' failure to
15 compensate PLAINTIFF and other Aggrieved Employees for all hours worked and the
16 underpayment of wages owed to PLAINTIFF and other Aggrieved Employees.

17 33. For example, DEFENDANTS at times required PLAINTIFF to complete off-the-
18 clock work outside of scheduled shifts due to including but not limited to, work-related phone calls
19 and/or messages PLAINTIFF received to PLAINTIFF's phone and/or mobile device and was
20 required to respond to, including but not limited to, communications from supervisors regarding
21 scheduling and/or other work tasks, resulting in the underpayment of wages owed to PLAINTIFF.

22 34. Based on information and belief, other Aggrieved Employees were also at times
23 required to complete off-the-clock work outside of scheduled shifts due to including but not limited
24 to, work-related phone calls and/or messages they received to their phones and/or mobile devices
25 and were required to respond to, including but not limited to, communications from supervisors
26 regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to
27 Aggrieved Employees.

28 35. Based on information and belief, at times, Aggrieved Employees were required to

1 stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were
2 required to spend time logging into/booting up, troubleshooting and/or initiating/reinitiating
3 DEFENDANTS' electronic/biometric time-keeping system before they could clock in for the start
4 of their shifts and/or after completing a purported meal period but were not compensated for all time
5 spent under DEFENDANTS' control resulting in DEFENDANTS' failure to compensate Aggrieved
6 Employees for all hours worked and the underpayment of wages owed to Aggrieved Employees.

7 36. Based on information and belief, DEFENDANTS failed to pay Aggrieved
8 Employees for time they were required to spend completing orientation, policy questionnaires,
9 and/or time spent completing the onboarding process including but not limited to reviewing various
10 documents and policies provided by DEFENDANTS. Based on information and belief, this work
11 time was completed off-the-clock and was not compensated.

12 37. Based on information and belief, at times, DEFENDANTS implemented a time-
13 rounding system that as applied systematically deprived Aggrieved Employees of compensable time
14 because the time-rounding system implemented by DEFENDANTS would almost always, if not
15 always, result in understating actual compensable work time.

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

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

27 40. Based on information and belief, DEFENDANTS failed and continue to fail to pay
28 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours

1 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
2 a work week, in violation of California's overtime laws.

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

8 42. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
9 worked shifts of more than five hours, entitling them to at least one meal period. However,
10 PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty (30) minute
11 first and second meal periods. Based on information and belief, Aggrieved Employees were
12 consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being
13 forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal
14 periods due to understaffing, the nature and constraints of their job duties and/or commentary from
15 supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

16 43. For example, based on information and belief, at times, Aggrieved Employees were
17 forced to skip their owed meal periods completely, take late meal periods in order to complete
18 assigned job duties, were interrupted during purported meal periods, had meal periods cut short,
19 were restricted to DEFENDANTS' premises/their assigned work stations and/or were otherwise
20 required to remain on-duty during unpaid meal periods due to the need to continue assigned job
21 duties.

22 44. For example, at times, PLAINTIFF was required to take PLAINTIFF's meal period
23 beyond the fifth hour of work. There were also instances in which PLAINTIFF was interrupted
24 during PLAINTIFF's meal periods. For example, at times, PLAINTIFF was required to return to
25 work while clocked out for meal periods, resulting in denied meal periods as DEFENDANTS'
26 failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed.

27 45. DEFENDANTS further violated California meal period law by failing to provide
28 PLAINTIFF with a second meal period during those shifts that PLAINTIFF worked more than ten

1 (10) and/or twelve (12) hours.

2 46. For example, DEFENDANTS' time records for PLAINTIFF for including but not
3 limited to, the following dates reflect PLAINTIFF worked a shift lasting longer than ten (10) hours
4 without clocking out for any second meal period: October 16, 2024, October 21, 2024, and October
5 25, 2024.

6 47. Based on information and belief, other Aggrieved Employees were consistently
7 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
8 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
9 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
10 the need to meet DEFENDANTS' goals and expectations.

11 48. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
13 during unpaid meal periods.

14 49. Based on information and belief, DEFENDANTS required Aggrieved Employees to
15 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
16 into account when scheduling meal periods for Aggrieved Employees. Based on information and
17 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

18 50. Based on information and belief, despite DEFENDANTS' failure to provide lawful
19 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
20 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
21 deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite
22 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did
23 not receive lawful meal periods.

24 51. Moreover, based on information and belief, Aggrieved Employees who worked shifts
25 of more than ten (10) and/or twelve (12) hours did not receive a second legally compliant thirty (30)
26 minute second meal period.

27 52. For example, as explained herein, PLAINTIFF was not afforded a second meal
28 period when PLAINTIFF worked shifts lasting longer than ten (10) and/or twelve (12) hours.

1 53. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
2 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
3 information and belief, DEFENDANTS did not have a written meal period policy, nor did
4 DEFENDANTS have any sort of compliant policy in practice.

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

11 55. Based on information and belief, DEFENDANTS had actual and/or constructive
12 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
13 were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
14 violation of California's meal period laws.

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

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

26 58. PLAINTIFF and other Aggrieved Employees were not adequately informed,
27 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
28 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to

1 the taking of duty-free rest periods.

2 59. Based on information and belief, DEFENDANTS did not have a have a compliant
3 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
4 practice.

5 60. For example, based on information and belief, at times, PLAINTIFF and other
6 Aggrieved Employees were unable to take compliant rest periods due to their need to complete
7 assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area
8 and/or had purported rest periods restricted to DEFENDANTS' premises/their workstations.

9 61. Moreover, per DEFENDANTS' unlawful rest period policies and practices,
10 PLAINTIFF was allowed a maximum of only two (2) rest periods per shift even when PLAINTIFF
11 worked shifts lasting longer than ten (10) hours.

12 62. Based on information and belief, DEFENDANTS did not have a lawful policy,
13 instruction, or practice as to the taking, timing, or duty-free nature of rest periods. For example,
14 based on information and belief, DEFENDANTS failed to authorize and permit rest periods that
15 were a "net" ten minutes in a suitable rest area, and instead, to the extent rest periods were provided,
16 DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-minute rest
17 periods, requiring them to be back at their workstations within ten minutes of leaving their work
18 stations , in violation of California rest period law.

19 63. Also, based on information and belief, DEFENDANTS had no policy and/or practice
20 as to the proper timing and/or duty-free nature of rest periods. For example, based on information
21 and belief, DEFENDANTS failed to allow PLAINTIFF and other Aggrieved Employees to take off-
22 duty rest periods that were insofar as practicable in the middle of the work period, as required by
23 law.

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

28 65. Moreover, based on information and belief, at times, DEFENDANTS failed to

1 provide any form of a third rest period on shifts lasting longer than ten hours.

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

5 67. Based on information and belief, DEFENDANTS implemented policies and/or
6 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
7 DEFENDANTS' control during rest periods.

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

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

23 70. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
24 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
25 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
26 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
27 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
28 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or

1 other off-the-clock work policies and practices) which results in a violation of Labor Code section
2 226(a).

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

7 72. Based on information and belief, wage statements issued by DEFENDANTS failed
8 to list all applicable hourly rates in effect during the pay period and the corresponding number of
9 hours worked at each hourly rate by the employee, in violation of including but not limited to, Labor
10 Code section 226(a)(9).

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

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

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

23 76. Upon separation of employment, Aggrieved Employees final paychecks were not
24 timely provided, were not timely provided with all owed vacation pay and/or paid time off and/or
25 did not include all wages owed as they were devoid of, including but not limited to, all owed
26 minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid
27 time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid
28 time off paid at the final rate including non-discretionary compensation, including but not limited

1 to, all owed shift differentials).

2 77. Based on further information and belief, DEFENDANTS failed to timely provide all
3 owed wages immediately upon discharge of employment. Based on information and belief, at times,
4 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
5 Aggrieved Employees would not be called in for work for longer than a single pay period due to
6 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
7 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
8 the end of such periods of employment, in violation of including but not limited to Labor Code
9 section 201-202. As such, DEFENDANTS violated Labor Code sections 201 and/or 202, subjecting
10 DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256.

11 78. These violations subject DEFENDANTS to civil penalties under Labor Code section
12 203, 210, and/or 256.

13 79. **Unreimbursed Business Expenses.** Based on information and belief,
14 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
15 direct consequence of the performance of their job duties without providing reimbursement, in
16 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
17 Employees were improperly required to provide and maintain work tools that are supposed to be the
18 responsibility of the employer.

19 80. Based on information and belief, DEFENDANTS shifted the costs of doing business
20 onto PLAINTIFF and other Aggrieved Employees requiring them to pay for business expenses,
21 including but not limited to, uniforms/work clothing/work shoes/boots/personal protective/safety
22 gear/hand tools/equipment and/or the use of Aggrieved Employees' personal cell phones/mobile
23 devices, internet and/or data usage for work-related purposes, including but not limited to, to receive
24 and respond to work-related messages and/or phone calls.

25 81. For example, DEFENDANTS required PLAINTIFF to use PLAINTIFF's personal
26 cell phone(s) / mobile device(s) to carry out PLAINTIFF's assigned job duties, however,
27 DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for the business
28 expenses PLAINTIFF incurred in connection with being required to use PLAINTIFF's personal cell

1 phone/mobile device for work, including but not limited to, increased data plan charges.

2 82. For example, PLAINTIFF was required to receive and respond to work-related calls
3 and/or messages from supervisors and/or other employees regarding scheduling and/or other work
4 tasks but was not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

5 83. Based on information and belief, other Aggrieved Employees were also required to
6 receive and respond to work-related calls and/or messages from supervisors and/or other employees
7 regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all
8 and/or in full for these business expenses.

9 84. Based on information and belief, DEFENDANTS regularly failed to reimburse and
10 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
11 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
12 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
13 assigned by DEFENDANTS.

14 85. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
15 for all reasonable expenses associated with carrying out their duties required that Aggrieved
16 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
17 2802.

18 86. **Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
19 employee who is discharged shall be paid at the place of discharge, and every employee who quits
20 shall be paid at the office or agency of the employer in the county where the employee has been
21 performing labor. All payments shall be made in the manner provided by law.

22 87. Based on information and belief, DEFENDANTS have a policy and practice of
23 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
24 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
25 office or agency of DEFENDANTS in the county where the work was performed, in violation of
26 Labor Code Section 208.

27 88. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
28 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow

1 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
2 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
3 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
4 limited to, any owed shift differentials) to Aggrieved Employees upon separation of employment,
5 in violation of California law, including but not limited to, Labor Code section 227.3.

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

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

20 91. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
21 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
22 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
23 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
24 accrued sick leave hours on the correct number of hours worked (as a result of the
25 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
26 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
27 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
28 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary

1 compensation into the sick leave pay rate calculation.

2 92. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
3 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
4 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
5 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
6 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
7 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
8 used sick leave and the balance of paid sick leave.

9 93. Based on information and belief, throughout the relevant time period,
10 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
11 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave.

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

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

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

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

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

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

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

9 99. Based on information and belief, DEFENDANTS failed to provide Aggrieved
10 Employees with suitable seating, and when such employees were not engaged in duties which
11 required them to stand, no seating was placed in reasonable proximity to their workstations. For
12 example, DEFENDANTS failed to provide PLAINTIFF with suitable seating, and when
13 PLAINTIFF was not engaged in duties which required PLAINTIFF to stand, no seating was placed
14 in reasonable proximity to PLAINTIFF's workstation.

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

20 101. **Violation of Labor Code Sections 2100-2112.** Pursuant to Labor Code Sections
21 2100-2112, employers with one hundred (100) or more employees at a single warehouse
22 distribution center, or one thousand (1,000) or more employees at one or more warehouse
23 distribution centers in California are required to provide nonexempt employees, upon hire, with a
24 written description of each quota they are subject to (e.g., quantified number of tasks to be performed
25 or materials to be handled) within a defined period of time and any potential adverse employment
26 action that may result from failure to meet the quota. Labor Code Section 2102 (see below) prohibits
27 adverse employment actions against employees who fail to meet their quota if the quota was not
28 properly disclosed to the employee and prohibits quotas that prevent an employee from taking his

1 or her meal or rest breaks, use of restrooms, or that interfere with compliance with California's
2 occupational health and safety laws.

3 102. Labor Code Section 2101 provides:

4 103. Each employer shall provide to each employee, upon hire, or within 30 days of the
5 effective date of this part, a written description of each quota to which the employee is subject,
6 including the quantified number of tasks to be performed or materials to be produced or handled,
7 within the defined time period, and any potential adverse employment action that could result from
8 failure to meet the quota.

9 104. Labor Code Section 2102 provides:

10 105. An employee shall not be required to meet a quota that prevents compliance with
11 meal or rest periods, use of bathroom facilities, including reasonable travel time to and from
12 bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.
13 An employer shall not take adverse employment action against an employee for failure to meet a
14 quota that does not allow a worker to comply with meal and rest periods, or occupational health and
15 safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been
16 disclosed to the employee pursuant to Section 2101.

17 106. Labor Code Section 2104 provides in pertinent part:

18 107. (a)(1) If a current or former employee believes that meeting a quota caused a
19 violation of their right to a meal or rest period or required them to violate any occupational health
20 and safety laws in the Labor Code or division standards, they have the right to request, and the
21 employer shall provide, a written description of each quota to which the employee is subject and a
22 copy of the most recent 90 days of the employee's own personal work speed data.

23 108. (2) If a former employee requests a written description of the quotas to which they
24 were subject and a copy of their own personal work speed data pursuant to paragraph (1), the
25 employer shall provide 90 days of the former employee's quotas and personal work speed data for
26 the 90 days prior to the date of the employee's separation from the employer.

27 109. (b) An employer that receives a written or oral request for information pursuant to
28 subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar

1 days from the date of the request.

2 110. Based on information and belief, during the relevant period, DEFENDANTS
3 employed 100 or more Aggrieved Employees at a single warehouse distribution center and/or
4 employed 1,000 or more Aggrieved Employees at one or more distribution centers in California
5 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the
6 relevant period.

7 111. Based on information and belief, DEFENDANTS had/have a policy and practice of
8 failing to provide Aggrieved Employees, upon hire, with a written description of each quota they
9 are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
10 defined period of time and any potential adverse employment action that may result from failure to
11 meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and
12 practice of subjecting Aggrieved Employees to quotas that prevented those Aggrieved Employees
13 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
14 compliance of California's occupational health and safety laws.

15 112. Based on further information and belief, DEFENDANTS have/had a policy and
16 practice of subjecting Aggrieved Employees to adverse employment actions for failure to meet a
17 quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to
18 comply with meal and rest period laws and/or occupational health and safety laws, in violation of
19 Labor Code section 2102.

20 113. Based on information and belief, DEFENDANTS failed and continue to fail to timely
21 produce upon written and/or oral request by current and/or former Aggrieved Employees of the
22 belief that meeting a quota caused a violation of their right to a meal or rest period and/or required
23 them to violate any occupational health and safety laws, a written description of each quota to which
24 the employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own
25 personal work speed data.

26 114. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
27 Code section 2100-2112 as to Aggrieved Employees and are subject to civil penalties.

28 Unlawful Agreements.

1 115. Labor Code section 432.5 provides that “no employer...shall require any employee
2 or applicant for employment to agree, in writing, to any term or condition which is known by such
3 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
4 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
5 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
6 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
7 meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements
8 and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
9 employment in violation of Labor Code section 432.5.

10 116. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
11 employment, continued employment, or the receipt of any employment-related benefit, require any
12 applicant for employment or any employee to waive any right...”Based on information and belief,
13 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
14 signed as a condition of employment, including but not limited to, during the onboarding process.
15 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
16 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
17 invalid waivers are otherwise unlawful under Labor Code section 432.6.

18 117. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
19 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
20 432.5.

21 118. **Violation of Labor Code Section 432.6.** Based on information and belief,
22 DEFENDANTS require/required Aggrieved Employees to waive their right to first and/or second
23 meal periods as a condition of working for DEFENDANTS in violation of California law. As such,
24 DEFENDANTS violated including but not limited to, Labor Code section 432.6 by virtue of
25 including but not limited to, requiring Aggrieved Employees to sign invalid meal period waivers as
26 a condition of employment and/or for threatening, retaliating and/or discriminating against and/or
27 terminating Aggrieved Employees because of their refusal to waive their meal period rights.

28 119. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS

1 engaged in these same herein described unlawful practices, which led to violations of the California
2 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
3 unlawful practices to all of its employees that it applied to PLAINTIFF.

4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
6 **2698, *ET SEQ.***
7 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
8 **Defendants)**

9 120. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 **Failure to Keep Accurate Records**

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

15 122. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
16 and complete records as required by law, including but not limited to the following records: total
17 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
18 Aggrieved Employees began and ended each work period, time records of meal periods, and
19 accurate itemized wage statements.

20 123. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
21 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
22 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
23 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
24 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
25 period during which the referenced statutes and Wage Order provisions were violated.³

26 **Meal Period Violations**

27 124. California law requires employers to provide employees a duty-free, uninterrupted
28 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and

³ Labor Code § 2699(f)

1 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
2 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
3 *Court* (2012) 53 Cal.4th 1004.

4 125. Employers must also provide employees with a second duty-free, uninterrupted thirty
5 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
6 be provided before the end of the 10th hour of work. *Ibid.*

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

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

22 128. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
23 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
24 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
25 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
26 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
27 periods completely.

28 129. Based on information and belief, DEFENDANTS had and continue to have a policy

1 of rounding the start and end times of employees' meal periods and/or automatically deducting
2 thirty/sixty minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF
3 and Aggrieved Employees did not receive compliant meal periods.

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

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

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

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

21 **Rest Period Violations**

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

1 1029). The rest period requirement obligates employers to permit and authorize employees to take
2 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
3 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
4 257. If the employer fails to provide any required rest period, the employer must pay the employee
5 one hour of pay at the employee's regular rate of compensation for each workday the employer did
6 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
7 applicable IWC Wage Order, §12(B).

8 135. Moreover, under California law rest periods must be a "net" ten minutes in a suitable
9 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
10 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
11 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
12 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
13 which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what
14 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
15 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
16 "onus is on the employer to clearly communicate the authorization and permission [to take rest
17 periods] to its employees.").

18 136. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
19 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
20 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
21 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
22 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
23 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

12 **Minimum and Overtime Wage Violations**

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

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

26 143. As explained above, DEFENDANTS violated California's minimum and overtime
27 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
28 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift

1 start and end times and meal period start and end times), payment according to scheduled hours
2 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
3 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
4 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

5 144. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
6 Aggrieved Employees for all hours worked.

7 145. Based on information and belief, DEFENDANTS had actual or constructive
8 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
9 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
10 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
11 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
12 Employees.

13 146. Based on information and belief, DEFENDANTS calculated the owed overtime
14 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
15 based on the minimum wage established for the cities and/or counties within which Aggrieved
16 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
17 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
18 above the California minimum wage rate.

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

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

26 149. Based on information and belief, DEFENDANTS further violated California's
27 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
28 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary

1 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
2 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
3 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
4 other Aggrieved Employees.

5 150. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
6 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
7 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
8 Wage Orders, section 20.

9 **Statutory Wage Violations**

10 151. California Labor Code section 223 makes it unlawful for an employer to secretly pay
11 wages lower than required by statute while purporting to pay legal wages. As described above,
12 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
13 earned minimum and overtime compensation for all hours worked which resulted in the payment of
14 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
15 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
16 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
17 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
18 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
19 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
20 Labor Code § 2699(f)-(g).

21 **Refusal to Make Payment**

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

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.⁴

2 **Standard Conditions of Labor Violations**

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

11 **Business Expense Violations**

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

18 155. Among other things, under California law, when employees must use their personal
19 cellphones for work-related purposes, the employer must reimburse them for a reasonable
20 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
21 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
22 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
23 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
24 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
25 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

26 _____
27 ⁴ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

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

5 157. As described above, PLAINTIFF and the Aggrieved Employees were improperly
6 required to pay for business expenses that are legally the responsibility of the employer.

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

11 159. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
12 Employees have suffered injury in that they were not completely reimbursed as mandated by
13 California law.

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

18 161. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
19 Employees have suffered injury in that they were not completely reimbursed as mandated by
20 California law.

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

25 **Wage Statement Violations**

26 163. California law requires every employer semi-monthly or at the time of each payment
27 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
28 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of

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

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

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

25 166. As explained above, wage statements issued by DEFENDANTS failed to list the
26 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
27 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices

1 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
2 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
3 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

4 167. Based on information and belief, wage statements issued by DEFENDANTS failed
5 to list all applicable hourly rates in effect during the pay period and the corresponding number of
6 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
7 Code section 226(a)(9).

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

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

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

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

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

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

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

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

7 **Violation of Labor Code Section 208**

8 175. Labor Code Section 208 provides: Every employee who is discharged shall be paid
9 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
10 employer in the county where the employee has been performing labor. All payments shall be made
11 in the manner provided by law.

12 176. Based on information and belief, DEFENDANTS have a policy and practice of
13 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
14 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
15 office or agency of DEFENDANTS in the county where the work was performed, in violation of
16 Labor Code Section 208.

17 **Failure to Pay Vested Vacation/Paid Time Off**

18 177. California Labor Code section 227.3 provides that when an employer policy provides
19 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
20 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
21 employee's final rate in accordance with such contract of employment or employer policy respecting
22 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
23 off upon termination.

24 178. Based on information and belief, DEFENDANTS had and continue to have a
25 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
26 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
27 at the properly accrued rates (including but not limited to any owed shift differential pay) to

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

1 Aggrieved Employees upon separation of employment, in violation of California law, including but
2 not limited to, Labor Code section 227.3.

3 **Untimely Payment of Final Wages**

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

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

17 181. Based on information and belief, upon separation of employment, Aggrieved
18 Employees’ final paychecks were not timely provided, were not timely provided with all owed
19 vacation pay/ and/or paid time off and/or did not include all wages owed, in violation of Labor Code
20 section 201-202. Based on information and belief, Aggrieved Employees’ final paychecks did not
21 include all wages owed as they are devoid of, including but not limited to, all owed minimum wages,
22 overtime wages, premium wages, vacation pay and/or all paid time off wages at the properly accrued
23 rates (including but not limited to any owed shift differential pay).

24 182. Based on information and belief, at times, Aggrieved Employees experienced breaks
25 in employment caused by DEFENDANTS whereby Aggrieved Employees would not be called in
26 for work for longer than a single pay period due to including but not limited to DEFENDANTS’
27 lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet,
28 DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in

1 violation of including but not limited to Labor Code section 201-202.

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

5 **Sick Leave Violations**

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

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

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

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

26 188. Upon information and belief, DEFENDANTS failed and continue to fail to comply
27 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
28 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick

1 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
2 wages.

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

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

7 **Seating Violations**

8 191. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
9 provided with suitable seats when the nature of the work reasonably permits the use of seats and
10 when they are not actively engaged in the work duties that would not permit them to be seated.

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

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

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

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

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

25 197. Moreover, based on information and belief, the nature of the work reasonably
26 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
27 Lastly, based on information and belief, there were periods of time when Aggrieved Employees
28 were not engaged in active duties of their employment, yet there were no suitable seats in reasonable

1 proximity to the work area and use of seats would not interfere with the performance of their duties.

2 198. DEFENDANTS' Aggrieved Employees worked in various positions. The nature of
3 Aggrieved Employees' work reasonably permitted the use of seats. However,
4 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
5 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
6 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
7 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
8 Aggrieved Employees, results in a separate civil penalty.

9 **Violation of Labor Code Sections 2100-2112**

10 199. Pursuant to Labor Code Sections 2100–2112, employers with one hundred (100) or
11 more employees at a single warehouse distribution center, or one thousand (1,000) or more
12 employees at one or more warehouse distribution centers in California are required to provide
13 nonexempt employees, upon hire, with a written description of each quota they are subject to (e.g.,
14 quantified number of tasks to be performed or materials to be handled) within a defined period of
15 time and any potential adverse employment action that may result from failure to meet the quota.
16 Labor Code Section 2102 (see below) prohibits adverse employment actions against employees who
17 fail to meet their quota if the quota was not properly disclosed to the employee and prohibits quotas
18 that prevent an employee from taking his or her meal or rest breaks, use of restrooms, or that interfere
19 with compliance with California's occupational health and safety laws.

20 200. Labor Code Section 2101 provides:

21 201. Each employer shall provide to each employee, upon hire, or within 30 days of the
22 effective date of this part, a written description of each quota to which the employee is subject,
23 including the quantified number of tasks to be performed or materials to be produced or handled,
24 within the defined time period, and any potential adverse employment action that could result from
25 failure to meet the quota.

26 202. Labor Code Section 2102 provides:

27 203. An employee shall not be required to meet a quota that prevents compliance with
28 meal or rest periods, use of bathroom facilities, including reasonable travel time to and from

1 bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.
2 An employer shall not take adverse employment action against an employee for failure to meet a
3 quota that does not allow a worker to comply with meal and rest periods, or occupational health and
4 safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been
5 disclosed to the employee pursuant to Section 2101.

6 204. Labor Code Section 2104 provides in pertinent part:

7 205. (a)(1) If a current or former employee believes that meeting a quota caused a
8 violation of their right to a meal or rest period or required them to violate any occupational health
9 and safety laws in the Labor Code or division standards, they have the right to request, and the
10 employer shall provide, a written description of each quota to which the employee is subject and a
11 copy of the most recent 90 days of the employee's own personal work speed data.

12 206. (2) If a former employee requests a written description of the quotas to which they
13 were subject and a copy of their own personal work speed data pursuant to paragraph (1), the
14 employer shall provide 90 days of the former employee's quotas and personal work speed data for
15 the 90 days prior to the date of the employee's separation from the employer.

16 207. (b) An employer that receives a written or oral request for information pursuant to
17 subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar
18 days from the date of the request.

19 208. Based on information and belief, during the relevant period, DEFENDANTS
20 employed 100 or more Aggrieved Employees at a single warehouse distribution center and/or
21 employed 1,000 or more Aggrieved Employees at one or more distribution centers in California
22 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the
23 relevant period.

24 209. Based on information and belief, DEFENDANTS had/have a policy and practice of
25 failing to provide Aggrieved Employees, upon hire, with a written description of each quota they
26 are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
27 defined period of time and any potential adverse employment action that may result from failure to
28 meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and

1 practice of subjecting Aggrieved Employees to quotas that prevented those Aggrieved Employees
2 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
3 compliance of California's occupational health and safety laws.

4 210. Based on further information and belief, DEFENDANTS have/had a policy and
5 practice of subjecting Aggrieved Employees to adverse employment actions for failure to meet a
6 quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to
7 comply with meal and rest period laws and/or occupational health and safety laws, in violation of
8 Labor Code section 2102.

9 211. Based on information and belief, DEFENDANTS failed and continue to fail to timely
10 produce upon written and/or oral request by current and/or former Aggrieved Employees of the
11 belief that meeting a quota caused a violation of their right to a meal or rest period and/or required
12 them to violate any occupational health and safety laws, a written description of each quota to which
13 the employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own
14 personal work speed data.

15 212. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
16 Code section 2100-2112 as to Aggrieved Employees and are subject to civil penalties.

17 **Unlawful Agreements/Waivers**

18 213. Labor Code section 432.5 provides that "no employer...shall require any employee
19 or applicant for employment to agree, in writing, to any term or condition which is known by such
20 employer...to be prohibited by law." Based on information and belief, DEFENDANTS required
21 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
22 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
23 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
24 meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements
25 and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
26 employment in violation of Labor Code section 432.5.

27 214. Labor Code section 432.6(a), provides that "a person shall not, as a condition of
28 employment, continued employment, or the receipt of any employment-related benefit, require any

1 applicant for employment or any employee to waive any right..."Based on information and belief,
2 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
3 signed as a condition of employment, including but not limited to, during the onboarding process.
4 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
5 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
6 invalid waivers are otherwise unlawful under Labor Code section 432.6.

7 215. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
8 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
9 432.5.

10 216. Based on information and belief, DEFENDANTS require/required Aggrieved
11 Employees to waive their right to first and/or second meal periods as a condition of working for
12 DEFENDANTS in violation of California law. As such, DEFENDANTS violated including but not
13 limited to, Labor Code section 432.6 by virtue of including but not limited to, requiring Aggrieved
14 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
15 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
16 refusal to waive their meal period rights.

17 217. Under the provisions of PAGA and the above mentioned Labor Code sections,
18 including but not limited to Labor Code sections 201-203, 208, 210, 216, 223, 225.5, 226, 226.7,
19 227.3, 245-248.6, 256, 432.5, 432.6, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
20 1199, 2100-2112, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
21 interpretations of these laws by California Courts and administrative bodies, as well as any other
22 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

23 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
24 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute,
25 pursuant to Labor Code section 2699(a); and

26 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
27 violations without a civil penalty recoverable under the PAGA, all in the default amounts provided
28 by Labor Code section 2699(f).

218. 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 the State of California, and all Aggrieved Employees:

1. For civil penalties under Labor Code Section 2699;
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: March 27, 2025

CROSNER LEGAL, PC

By:

Zuk

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
CHEYNE CASTILLO