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As an individual and on behalf of all other similarly situated Class Members and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

WINSTON TOOLSIE, as an individual and
on behalf of all other similarly situated
Class Members,

Plaintiff,

v.

DIRECT TRAVEL, INC., a Delaware
Corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 25CV122876

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Recovery of Unpaid Minimum Wages and Liquidated Damages**
- 2. Recovery of Unpaid Overtime Wages**
- 3. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 4. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 5. Failure to Furnish Accurate Itemized Wage Statements**
- 6. Failure to Timely Pay All Wages Due Upon Separation of Employment**
- 7. Failure to Reimburse Business Expenses**
- 8. Unfair Competition and**
- 9. Violation of the Private Attorneys General Act, Labor Code Sections 2698, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff, WINSTON TOOLSIE (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below) and Aggrieved Employees (as defined below),
3 hereby files this First Amended Complaint against Defendants DIRECT TRAVEL, INC., a
4 Delaware Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Alameda pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS operate at
10 least one location in Alameda County, and conduct alleged by PLAINTIFF herein occurred in this
11 judicial district. Venue is also proper pursuant to section 393 of the California Code of Civil
12 Procedure because the cause, or some part of the cause, arose in the County of Alameda.

13 **THE PARTIES**

14 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
15 California and a citizen of the State of California.

16 3. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
17 of corporate travel advisor or a similar title/job position, from in or around October 2024, through
18 in or around December 2024. DEFENDANTS assigned PLAINTIFF to work primarily on a remote
19 basis, from PLAINTIFF’s home, located in San Bernardino County, California.

20 4. Defendant, DIRECT TRAVEL, INC., is a Delaware corporation that at all relevant
21 times was authorized to do business in California and is doing business in California.

22 5. DEFENDANTS own, operate, manage and/or staff its employees to work at the
23 offices, home/remote offices, facilities and/or other locations in California, including but not limited
24 to, in Alameda County, Santa Clara County, and San Bernardino County, California.
25 DEFENDANTS operate business under including but not limited to the following names: “Direct
26 ATPI Global Travel” and/or “Direct Travel.” DEFENDANTS, through their various locations, serve
27 the including but not limited to, travel and/or business/consumer services industry.¹

28 ¹ See <https://www.dt.com/>. Last visited on May 5, 2025.

6. 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

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

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

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

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

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

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

25 **CLASS ALLEGATIONS**

26 14. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
27 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
28 seeks to represent are defined as follows and referred to as the "Class" or "Class Members":

1 All current and former non-exempt employees that worked either
2 directly or via a staffing agency for any one or more of the
3 DEFENDANTS at any location in California at any time within the
4 four years prior to the filing of the initial Complaint (“Class Period”).

5 a. Numerosity. While the exact number of Class Members is unknown to
6 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
7 all members is impractical under the circumstances of this case. PLAINTIFF is
8 informed and believes the Class consists of at least 50 individuals.

9 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
10 because common questions of law and fact predominate over individual issues.
11 Common questions include, but are not limited to, the following: (1) whether
12 DEFENDANTS understated hours worked and failed to pay all amounts due to
13 PLAINTIFF and the Class Members for wages earned, including minimum and
14 overtime wages, under California law; (2) whether DEFENDANTS provided
15 PLAINTIFF and the Class Members with all meal periods or premium payments
16 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
17 authorized PLAINTIFF and the Class Members to take all owed rest periods or
18 premium payments in lieu thereof, in compliance with California law; (4)
19 whether DEFENDANTS provided PLAINTIFF and Class Members with
20 accurate, itemized wage statements in compliance with California law,
21 displaying, including but not limited to, the total hours worked during the pay
22 period; (5) whether DEFENDANTS timely paid PLAINTIFF and the Class
23 Members all wages due upon separation of employment; (6) whether
24 DEFENDANTS failed to reimburse PLAINTIFF and the Class Members for all
25 business expenses; and (7) whether DEFENDANTS violated California
26 Business and Professions Code sections 17200, *et seq.*

27 c. Ascertainable Class. The proposed Class is ascertainable as members can be
28 identified and located using information in DEFENDANTS’ business, payroll

1 and personnel records.

- 2 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
- 3 PLAINTIFF suffered a similar injury as members of the Class as a result of
- 4 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
- 5 and pay all owed minimum and overtime wages, failure to provide proper meal
- 6 periods and rest periods or premium compensation in lieu thereof, failure to
- 7 provide accurate wage statements, failure to reimburse business expenses, and
- 8 failure to timely pay all wages due upon separation of employment.
- 9 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
- 10 Class Members. PLAINTIFF has no interests adverse to the interests of the other
- 11 Class Members. Counsel who represent PLAINTIFF are competent and
- 12 experienced in litigating similar class action cases and are California lawyers in
- 13 good standing. Counsel for PLAINTIFF have the experience and resources to
- 14 vigorously prosecute this case.
- 15 f. Superiority. A class action is superior to other available means for the fair and
- 16 efficient adjudication of this controversy since individual joinder of all members
- 17 of the class is impractical. Class action treatment will permit a large number of
- 18 similarly situated persons to prosecute their common claims in a single forum
- 19 simultaneously, efficiently, and without the unnecessary duplication of effort
- 20 and expense that numerous individual actions would engender. Furthermore, as
- 21 the damages suffered by each individual member of the Class may be relatively
- 22 small, the expenses and burden of individual litigation would make it difficult
- 23 or impossible for individual members of the Class to redress the wrongs done to
- 24 them, while an important public interest will be served by addressing the matter
- 25 as a class action. The cost to the court system of adjudication of such
- 26 individualized litigation would be substantial. Individualized litigation would
- 27 also present the potential for inconsistent or contradictory judgments. Finally,
- 28 the alternative of filing a claim with the California Labor Commissioner is not

1 superior, given the lack of discovery in such proceedings, the fact that there are
2 fewer available remedies, and the losing party has the right to a trial de novo in
3 the Superior Court.

4 **FACTUAL AND LEGAL ALLEGATIONS**

5 15. During the relevant period, PLAINTIFF, and each of the Class Members and
6 Aggrieved Employees, worked for DEFENDANTS in the State of California. At all times referenced
7 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
8 Employees and suffered and/or permitted them to work.

9 16. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
10 of corporate travel advisor or a similar title/job position, from in or around October 2024, through
11 in or around December 2024.

12 17. PLAINTIFF regularly worked at least approximately eight (8) hours per day, at least
13 five (5) days per week, at times working more than eight (8) hours in a workday and/or more than
14 forty (40) hours in a workweek.

15 18. DEFENDANTS assigned PLAINTIFF to work primarily on a remote basis, from
16 PLAINTIFF's home, located in San Bernardino County, California.

17 19. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
18 DEFENDANTS as hours worked. At times, PLAINTIFF was paid an hourly rate of \$29.00

19 20. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
20 PLAINTIFF and other Class Members and Aggrieved Employees for all hours worked, resulting in
21 the underpayment of minimum and overtime wages.

22 21. Class Members and Aggrieved Employees were not paid for all hours worked due to
23 DEFENDANTS' mandated off-the clock work policies and practices.

24 22. For example, PLAINTIFF and other Class Members and Aggrieved Employees were
25 not compensated for all time spent booting up, logging into, initiating and/or reinitiating
26 DEFENDANTS' computer programs/electronic systems, resulting in pre-shift off-the-clock work
27 and/or off-the-clock work during unpaid meal periods and the underpayment of minimum wages
28 and overtime wages owed.

1 23. For example, prior to being able to clock in for the start of PLAINTIFF's scheduled
2 shift each workday, PLAINTIFF was required to start/boot DEFENDANTS' computer
3 programs/electronic systems and use a two-step authentication process to log in so as to have the
4 programs/systems running at the start of the scheduled shift.

5 24. As such, PLAINTIFF spent at least approximately five (5) to ten (10) minutes before
6 each scheduled shift preparing different work applications, starting DEFENDANTS' computer
7 programs/electronic systems, and/or undergoing DEFENDANTS' authentication/verification
8 processes in order to clock in/begin his shift. This pre-shift work was off-the-clock and
9 uncompensated resulting in unpaid minimum and overtime wages.

10 25. After clocking out for the end of PLAINTIFF's shift each workday, PLAINTIFF was
11 required to then close, log off and shut down DEFENDANTS' computer programs/electronic
12 systems, resulting in at least approximately two (2) to three (3) minutes of post-shift off-the-clock
13 work on many, if not all workdays, PLAINTIFF worked during PLAINTIFF's employment.

14 26. Based on information and belief, at times, DEFENDANTS instructed PLAINTIFF
15 and other Class Members and Aggrieved Employees to record their scheduled shift start time and
16 end times regardless of when they actually started and stopped working on those days and/or
17 otherwise shaved time off their total hours worked, which resulted in off-the-clock and the
18 underpayment of wages owed.

19 27. For example, DEFENDANTS' time records for including but not limited to the
20 following dates, consistently show a total daily hours worked of eight (8) with the same precise shift
21 start time of 8:00 a.m. and same precise shift end time of 5:00 p.m. with an exactly sixty (60) minute
22 meal period taken each day from precisely 12:00 p.m. to precisely 1:00 p.m.: 10/7/24, 10/8/24,
23 10/9/24, 10/10/24, 10/11/24, 10/14/24, and 10/15/24.

24 28. DEFENDANTS' failure to pay for all time worked by virtue of its payment according
25 to scheduled hours rather than actual hours worked and/or other off-the-clock work practices and
26 policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class
27 Members and Aggrieved Employees as well as unpaid overtime wages for those Class Members
28 and Aggrieved Employees, such as PLAINTIFF, who worked more than eight (8) hours in a day

1 and/or more than forty (40) hours in a week.

2 29. DEFENDANTS failed and continue to fail to pay a premium wage rate for all hours
3 worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

4 30. Based on information and belief, DEFENDANTS had actual and/or constructive
5 knowledge that its off-the-clock work / time-shaving practices resulted in the underpayment of
6 minimum wages and overtime wages owed to Class Members and Aggrieved Employees, in
7 violation of California's minimum and overtime wage laws.

8 31. Based on information and belief, DEFENDANTS failed to incorporate all non-
9 discretionary remuneration, including but not limited to, bonus pay/incentive pay, shift differential
10 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
11 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
12 wages owed to PLAINTIFF and other Class Members and Aggrieved Employees.

13 32. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
14 Employees consistently worked shifts of more than five (5) hours, entitling them to at least one meal
15 period. At times, Plaintiff and other Class Members and Aggrieved Employees worked shifts of
16 more than ten (10) hours, entitling them to a second meal period.

17 33. However, at times, Class Members and Aggrieved Employees were unable to take
18 timely, off duty, thirty-minute, uninterrupted meal periods due to the nature and constraints of their
19 job duties and/or commentary from supervisors pressuring them to take non-compliant meal periods
20 or skip meal periods completely.

21 34. For example, PLAINTIFF was sometimes forced to take a late meal period. For
22 example, DEFENDANTS' time records for PLAINTIFF show PLAINTIFF did not clock out for a
23 meal period until past the fifth hour of work on including but not limited to the following dates:
24 October 17, 2024.

25 35. Also, as described herein, DEFENDANTS required PLAINTIFF and other Class
26 Members and Aggrieved Employees to complete off-the-clock work prior to their scheduled shift
27 time which DEFENDANTS failed to account for when scheduling meal periods for Class Members
28 and Aggrieved Employees. Based on information and belief, meal periods were late, in part, due to

1 unaccounted pre-shift off-the-clock work such as booting up, logging into, initiating and/or
2 reinitiating DEFENDANTS' computer programs/electronic systems prior to the start of scheduled
3 shift start times.

4 36. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
5 Employees, an additional hour of wages at their respective regular rates of compensation for each
6 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
7 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
8 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
9 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
10 the regular rate or compensation for purposes of calculating the owed meal period premium.

11 37. **Rest Period Violations.** DEFENDANTS did not properly authorize and permit
12 PLAINTIFF and other Class Members and Aggrieved Employees to take legally compliant rest
13 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
14 were in the middle of the work period, as required by law.

15 38. For example, based on information and belief, at times, PLAINTIFF and other Class
16 Members and Aggrieved Employees were unable to take compliant rest periods due to their need to
17 complete assigned job duties.

18 39. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
19 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
20 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
21 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
22 period premium due to including but not limited to, failure to incorporate all non-discretionary
23 remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-
24 discretionary compensation into the regular rate of compensation for purposes of calculating the
25 owed rest period premium.

26 40. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
27 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
28 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide

1 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
2 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
3 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
4 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee.

7 41. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
8 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
9 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
10 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of off-the-clock work
11 policies and practices/payment according to scheduled hours rather than actual hours worked) which
12 results in a violation of Labor Code section 226(a).

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

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

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

25 45. Upon separation of employment, Class Members and Aggrieved Employees final
26 paychecks were not timely provided and/or did not include all wages owed as they were devoid of,
27 including but not limited to, all owed minimum wages, overtime wages, premium wages and/or paid
28 time off wages at the properly accrued rates.

1 46. For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
2 for at least approximately five (5) to six (6) days after PLAINTIFF's termination date, and
3 PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to, all
4 owed minimum wages, overtime wages, and premium wages.

5 47. These violations subject DEFENDANTS to civil penalties under Labor Code section
6 203, 210, and/or 256.

7 48. **Unreimbursed Business Expenses.** DEFENDANTS required PLAINTIFF and
8 Class Members and Aggrieved Employees to incur business expenses as a direct consequence of the
9 performance of their job duties without providing reimbursement, in violation of Labor Code section
10 2802.

11 49. DEFENDANTS shifted the costs of doing business onto PLAINTIFF and other Class
12 Members and Aggrieved Employees requiring them to pay for business expenses, including, the use
13 of Class Members and Aggrieved Employees' personal cell phones for work-related purposes.

14 50. For example, Class Members and Aggrieved Employees were required to download
15 and use work-related applications on their personal cell phones and/or otherwise use their personal
16 phones to carry out their assigned job duties but were not reimbursed by DEFENDANTS at all for
17 these business expenses.

18 51. For example, prior to being able to clock in for a scheduled shift each workday,
19 DEFENDANTS required PLAINTIFF to use a two-step authentication process using PLAINTIFF's
20 personal cell phone to log into DEFENDANTS' computer programs/electronic systems, however,
21 DEFENDANTS did not provide PLAINTIFF with any reimbursement for the business expenses
22 PLAINTIFF incurred in connection with being required to use PLAINTIFF's personal cell phone
23 to carry out PLAINTIFF's assigned job duties.

24 52. Also, DEFENDANTS required Class Members and Aggrieved Employees to work
25 remotely, including but not limited to, from their homes. As a result of working from home, Class
26 Members and Aggrieved Employees were required to use their home internet, electricity, and other
27 utilities in the discharge of their job duties. DEFENDANTS lacked and continue to lack a policy to
28 reimburse employees who regularly increased utility expenses as a result of working from home.

1 Class Members and Aggrieved Employees' increased utility and internet expenses were expenses
2 for which DEFENDANTS were required to reimburse Class Members and Aggrieved Employees a
3 reasonable percentage based on their required business use because said expenses were necessarily
4 incurred by Class Members and Aggrieved Employees as a direct consequence of the discharge of
5 their duties of employment. However, DEFENDANTS failed to reimburse Class Members and
6 Aggrieved Employees at all and/or in full for these business expenses incurred as a result of being
7 required to work from their homes, in violation of California law.

8 53. For example, as a result of working from home, PLAINTIFF was required to use
9 PLAINTIFF's home internet, electricity, and other utilities in direct discharge of PLAINTIFF's job
10 duties, yet, DEFENDANTS failed to provide PLAINTIFF with any reimbursement for electricity
11 and internet expenses.

12 54. DEFENDANTS regularly failed to reimburse and indemnify Class Members and
13 Aggrieved Employees for business expenses. Pursuant to California Labor Code section 2802,
14 PLAINTIFF and Class Members and Aggrieved Employees were entitled to be reimbursed for all
15 reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the
16 duties assigned by DEFENDANTS.

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

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

24 **FIRST CAUSE OF ACTION**

25 **Recovery of Unpaid Minimum Wages and Liquidated Damages 26 (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

27 57. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 58. It is fundamental that an employer must pay its employees for all time worked.
California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.

1 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
2 permits deductions from wages when the employer is required or empowered to do so by state or
3 federal law or when the deduction is expressly authorized in writing by the employee for specified
4 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
5 prohibits the pay of less than a statutory or contractual wage scale.

6 59. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
7 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
8 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
9 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
10 period is unlawful.

11 60. DEFENDANTS violated California’s minimum wage laws by failing to compensate
12 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
13 DEFENDANTS’ off-the-clock work policies and practices and/or payment according to scheduled
14 hours rather than actual hours worked (described above), which resulted in the failure to account for
15 all hours worked and thus the denial of minimum wages.

16 61. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
17 Class Members for all hours worked.

18 62. Based on information and belief, DEFENDANTS had actual or constructive
19 knowledge that its practice of payment according to scheduled work time rather than actual work
20 time and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
21 owed to PLAINTIFF and other Class Members.

22 63. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
23 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
24 attorney's fees and costs, in an amount to be proved at trial.

25 **SECOND CAUSE OF ACTION**

26 **Recovery of Unpaid Overtime Wages** 27 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

28 64. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

65. Employees in California must be paid overtime, equal to one and one-half times the

1 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
2 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
3 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
4 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
5 consecutive day of work in a workweek, unless they are exempt.

6 66. PLAINTIFF and the Class Members worked overtime hours for which they were not
7 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time shaving
8 and/or off-the-clock policies and practices (described above), which resulted in the failure to account
9 for all hours worked and thus the denial of all owed overtime wages.

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

17 68. DEFENDANTS' conduct described above is in violation of California Labor Code
18 sections 510 and 1194 and all applicable Wage Orders.

19 69. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
20 wages, plus attorney's fees and costs, in an amount to be proved.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Provide Meal Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

23 70. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 71. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
25 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
26 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
27 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
28 waived, but only under the following circumstances: (1) if an employee's total work period in a day

1 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
2 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
3 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
4 waived by mutual consent of the employer and employee, but only if the first meal period was not
5 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
6 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
7 done so.

8 72. Employers must pay employees an additional hour of wages at the employees'
9 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
10 meal period, first meal period provided after five (5) hours, second meal period provided after 10
11 hours). Lab. Code § 226.7.

12 73. As explained above, PLAINTIFF and other Class Members were at times unable to
13 take timely, off duty, thirty-minute, uninterrupted meal periods, sometimes being forced to take late
14 meal periods, interrupted meal periods, and/or work through part or all of their meal periods due to
15 the nature and constraints of their job duties and/or commentary from supervisors pressuring them
16 to take non-compliant meal periods or skip meal periods completely.

17 74. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
18 actual and/or constructive knowledge that its unlawful policies and practices resulted in the denial
19 of compliant meal periods in violation of California's meal period laws.

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

25 76. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
26 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
27 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
28 all in an amount to be proved at trial.

FOURTH CAUSE OF ACTION
Failure to Provide Rest Periods or Compensation in Lieu Thereof
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

78. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

79. If the employer fails to provide any required rest period, the employer must pay the employee one hour of pay at the employee’s regular rate of compensation for each workday the employer did not provide at least one legally required rest period, pursuant to Labor Code section 226.7.

80. PLAINTIFF and the Class Members did not always receive legally compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained above, based on information and belief, at times, purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to DEFENDANTS’ control due to the nature and constraints of Class Members’ job duties, understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to skip rest periods completely or otherwise take non-compliant rest periods.

81. Based on information and belief, at times, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer control during rest periods.

82. As a result, PLAINTIFF and Class Members did not receive legally compliant first

1 and second rest periods as required by California law.

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

8 84. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
9 hour of additional pay at the regular rate of compensation for each workday that a required rest
10 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
11 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
12 trial.

13 **FIFTH CAUSE OF ACTION**

14 **Failure to Furnish Accurate Itemized Wage Statements (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

15 85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 86. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
17 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
18 wage statement accurately stating the following:

19 (1) gross wages earned, (2) total hours worked by the employee,
20 except for any employee whose compensation is solely based on a
21 salary and who is exempt from payment of overtime under
22 subdivision (a) of Section 515 or any applicable order of the Industrial
23 Welfare Commission, (3) the number of piece-rate units earned and
24 any applicable piece rate if the employee is paid on a piece-rate basis,
25 (4) all deductions, provided that all deductions made on written orders
26 of the employee may be aggregated and shown as one item, (5) net
27 wages earned, (6) the inclusive dates of the period for which the
28 employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

87. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with

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

8 88. Moreover, due to violations detailed above, including but not limited to,
9 DEFENDANTS' failure to pay regular and overtime wages for all hours worked and failure to
10 provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226
11 by willfully failing to furnish PLAINTIFF and other Class Members with accurate, itemized wage
12 statements that listed the gross and net wages earned and the correct applicable rates of pay for all
13 hours worked. Based on information and belief, DEFENDANTS failed to incorporate all forms of
14 non-discretionary compensation earned during the pay period into the regular rate of pay for
15 purposes of calculating the owed overtime rate, and as such, failed to display the proper overtime
16 rate(s) for each hour of overtime worked by PLAINTIFF and other Class Members.

17 89. As explained above, wage statements issued by DEFENDANTS failed to list the
18 "total hours worked" by PLAINTIFF and Class Members (by virtue of payment according to
19 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
20 and practices all described in greater detail *supra*), which results in a violation of Labor Code section
21 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury
22 under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308,
23 1337).

24 90. Based on information and belief, wage statements issued by DEFENDANTS failed
25 to list all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
27 For example, as described herein, based on information and belief, DEFENDANTS failed to
28 incorporate all forms of non-discretionary compensation earned during the pay period into the

1 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
2 of overtime worked by Class Members.

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

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

9 93. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
10 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
11 as they could not contact their employer regarding any question(s) they had about wages paid.

12 94. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
13 Class Members with accurate, itemized wage statements.

14 95. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
15 have suffered injury. The absence of accurate information on their wage statements has prevented
16 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
17 mathematical computations to determine the amount of wages owed, and will cause difficulty and
18 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
19 submission of inaccurate information about wages and amounts deducted from wages to state and
20 federal government agencies. As a result, PLAINTIFF and Class Members are required to
21 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
22 and pay records than if DEFENDANT had complied with its legal obligations.

23 96. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
24 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
25 violation occurred and one hundred dollars per employee per violation for each subsequent pay
26 period, not to exceed an aggregate penalty of four thousand dollars per employee.

27 97. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
28 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with

1 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
2 provide currently employed Class Members with inaccurate wage statements in violation of
3 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
4 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
5 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
6 with California Labor Code § 226(a).

7 98. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
8 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
9 attorneys' fees, and costs of suit.

10 **SIXTH CAUSE OF ACTION**

11 **Failure to Timely Pay All Wages Due Upon Separation of Employment (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

12 99. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

13 100. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
14 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
15 payable immediately."

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

21 102. Based on information and belief, DEFENDANTS failed and continue to fail to timely
22 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
23 Labor Code section 201-202.

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

1 discretionary compensation, including but not limited to, shift differentials).

2 104. For example, based on information and belief, at times, PLAINTIFF and other Class
3 Members experienced breaks in employment caused by DEFENDANTS whereby Class Members
4 would not be called in for work for longer than a single pay period due to including but not limited
5 to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of
6 employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods
7 of employment, in violation of including but not limited to Labor Code section 201-202.

8 105. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
9 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
10 pay, plus attorney's fees and costs, in an amount to be proved at trial.

11 **SEVENTH CAUSE OF ACTION**
12 **Failure to Reimburse Business Expenses**
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

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

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

28 109. As described above, PLAINTIFF and the Class Members were improperly required

1 to pay for business expenses that are legally the responsibility of the employer.

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

6 111. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
7 Members have suffered injury in that they were not completely reimbursed as mandated by
8 California law.

9 112. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
10 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
11 attorneys' fees, and costs of suit.

12 **EIGHTH CAUSE OF ACTION**

13 **Unfair Competition**

14 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

15 113. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 114. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
17 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
18 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
19 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
20 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
21 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
22 wage statements; DEFENDANTS' failure to reimburse business expenses; and DEFENDANTS'
23 failure to timely pay all wages owed upon separation of employment.

24 115. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
25 California Labor Code, DEFENDANTS have gained a competitive advantage over other
26 comparable companies doing business in the State of California that comply with their obligations
27 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
28 in lieu thereof, to provide complete and accurate itemized wage statements, to reimburse employees
for all business expenses, to pay all owed minimum and overtime wages and to pay all wages due

1 upon separation of employment of their employees.

2 116. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
3 and Class Members have suffered injury in fact and lost money or property, as described in more
4 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
5 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
6 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
7 unlawful and unfair business practices.

8 117. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
9 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
10 engaging in each of the unlawful practices and policies set forth herein.

11 118. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
12 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
13 by law.

14 **NINTH CAUSE OF ACTION**

15 **Violation of the Private Attorneys General Act of 2004**

16 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

17 119. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

21 All current and former non-exempt employees that worked either
22 directly or via a staffing agency for any one or more of the
23 DEFENDANTS at any location in California at any time from one
24 year plus 65 days from the filing of the initial Complaint through the
25 present ("PAGA Period").

26 121. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
27 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
28 limitations period and suffered one or more of the Labor Code violations set forth herein.

1 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
2 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
3 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
4 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
5 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
6 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
7 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
8 *Id.* at 760-761.

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

10 122. PLAINTIFF, on February 11, 2025, through counsel, gave written notice by online
11 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
12 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
13 in this Complaint (“PAGA Notice”). The PAGA Notice was also mailed to DEFENDANTS via
14 certified mail. A copy of the PAGA Notice is attached as Exhibit A and is incorporated by reference.

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

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

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

26 126. From one year prior to PLAINTIFF’s filing of the required PAGA notice with the
27 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
28 Labor Code sections 201-203, 210, 208, 210, 216, 218.5, 221-222, 223, 226, 226.6, 226.7, 227.3,

233, 234, 245-248.6, 256, 432.5-432.6, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198-1199, 2699, 2699.3, 2699.5, 2802, 2804, 2810.3, 2810.5, and all applicable Wage Orders as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA.

127. As set forth above, DEFENDANTS have committed numerous violations of the California Labor Code due to including but not limited to their failure to pay all owed minimum wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses, and failure to pay all owed wages upon separation of employment as alleged above. In addition, DEFENDANTS have committed violations of the California Labor Code due to a failure to provide proper paid sick leave and failure to calculate the sick leave accrual, the failure to pay wages due and payable and/or the denial of the validity of any claim to wages due, recordkeeping requirement violations, standard conditions of labor violations, statutory wage violations, failure to pay vested vacation/paid time off, violation of Labor Code Section 208, unlawful deductions from wages, unlawful agreements and/or unlawful waivers. PAGA penalties are in addition to any other relief available under the Labor Code.

128. DEFENDANTS have violated the following Labor Code sections and provisions of the applicable Wage Order as to Aggrieved Employees.

Meal Period Violations

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

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

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

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

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

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

20 134. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
21 actual and/or constructive knowledge that its unlawful policies and practices resulted in the denial
22 of compliant meal periods in violation of California's meal period laws.

23 135. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
24 periods in violation of California law and/or failed to pay the proper meal period premium for failure
25 to incorporate all non-discretionary remuneration including but not limited to, bonuses and/or other
26 non-discretionary compensation into the regular rate or compensation for purposes of calculating
27 the owed meal period premium.

28 136. These unlawful meal period policies and practices result in violations of Labor Code

1 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
2 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
3 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
4 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

5 **Rest Period Violations**

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

20 138. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
21 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
22 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
23 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
24 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
25 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
26 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
27 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
28 “onus is on the employer to clearly communicate the authorization and permission [to take rest

1 periods] to its employees.”).

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

8 140. Based on information and belief, at times, DEFENDANTS implemented policies
9 and/or practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
10 employer control during rest periods.

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

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

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

22 **Minimum and Overtime Wage Violations**

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

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

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

8 146. As explained above, DEFENDANTS violated California's minimum and overtime
9 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
10 by virtue of, among other things, DEFENDANTS' off-the-clock work policies and practices
11 described above which resulted in unpaid minimum and overtime wages.

12 147. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
13 Aggrieved Employees for all hours worked.

14 148. Based on information and belief, DEFENDANTS had actual or constructive
15 knowledge that off-the-clock work policies and practices resulted in the underpayment of minimum
16 and overtime wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

27 151. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
28 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS

1 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
2 Wage Orders, section 20.

3 **Violation of California Labor Code 245-248.5**

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

14 153. Based on information and belief, DEFENDANTS further failed to provide notice of
15 the correct sick leave amount balance available to PLAINTIFF and other Aggrieved Employees on
16 their wage statements or other written statements.

17 154. Based on information and belief, DEFENDANTS failed to put Aggrieved Employees
18 on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor
19 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
20 sick leave and the balance of paid sick leave left to the Aggrieved Employees throughout the relevant
21 time period.

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

28 156. This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms of

1 injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of
2 PLAINTIFF and all Aggrieved Employees.

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

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

12 159. DEFENDANTS unlawfully retained and continue to retain paid sick leave that
13 should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid
14 sick leave program.

15 160. On information and belief, PLAINTIFF alleges that all of these practices were
16 experienced and continue to be experienced by other Aggrieved Employees. PLAINTIFF requests
17 all appropriate relief under the PAGA and these statutes, including but not limited to the restitution
18 of earned paid sick leave that could have been used, but was not due to DEFENDANTS' sole failure
19 to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

20 161. Accordingly, PLAINTIFF and other Aggrieved Employees are entitled to injunctive
21 relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF
22 requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor
23 Code sections 233 and 234, which incorporates the paid sick leave requirements.

24 **Refusal to Make Payment**

25 162. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
26 and payable and/or denial of the validity of any claim to wages due.

27 163. DEFENDANTS violated and continue to violate Labor Code section 216 by failing
28 to pay PLAINTIFF and all Aggrieved Employees for all hours worked at the proper wage rate and

1 by failing to pay PLAINTIFF and all Aggrieved Employees an additional hour of pay for each meal
2 and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995)
3 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil penalties under
4 Labor Code section 225.5. Each violation results in a separate civil penalty, for each Aggrieved
5 Employees, for each pay period during which the statute's provisions were violated.²

6 **Recordkeeping Requirement Violations**

7 164. California Labor Code section 1174 requires employers to keep “accurate and
8 complete” payroll records showing, among other things, the hours worked daily by PLAINTIFF and
9 Aggrieve Employees. All applicable IWC Wage Orders, section 7 similarly requires employers to
10 keep accurate time records reflecting the times during which allowed meal periods were provided
11 each day.

12 165. Based on information and belief, DEFENDANTS failed, and continue to fail, to keep
13 accurate and complete payroll records as required by law, including but not limited to the following
14 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF
15 and other Aggrieved Employees began and ended each work period, time records of meal periods,
16 and accurate itemized wage statements.

17 166. Based on information and belief, DEFENDANTS failed and continue to fail to keep
18 accurate and complete records showing total hours worked by PLAINTIFF Aggrieved Employees
19 by virtue of DEFENDANTS' time rounding and/or auto deduction policies and practices and/or
20 other off-the-clock work policies and practices.

21 167. DEFENDANTS failed and continue to fail to keep accurate and complete records
22 showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and
23 Aggrieved Employees of all duties and DEFENDANTS' control for unpaid meal periods, resulting
24 in unpaid hours worked.

25 168. Based on information and belief, DEFENDANTS further failed, and continue to fail,
26 to record the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.

27 169. Based on further information and belief, DEFENDANTS further failed and continue

28

² See Lab. Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

1 to fail, to record the true start and end times of PLAINTIFF and Aggrieved Employees' work shifts.

2 170. Additionally, DEFENDANTS failed, and continue to fail to keep accurate records
3 and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and
4 Aggrieved Employees.

5 171. DEFENDANTS' failure to keep "accurate and complete" payroll records for
6 PLAINTIFF and Aggrieved Employees violates Labor Code sections 1174, 1198, 1199, and all
7 applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties
8 under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code
9 section and Wage Order provision, for each Aggrieved Employees, results in a separate civil
10 penalty.³

11 **Standard Conditions of Labor Violations**

12 172. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
13 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
14 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
15 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
16 violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping
17 provisions, minimum wages and overtime wages, business expenses, and other violations described
18 herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to
19 civil penalties under Labor Code sections 1197.1 and 2699.

20 **Statutory Wage Violations**

21 173. Labor Code section 223 makes it unlawful for an employer to secretly pay wages
22 lower than required by statute while purporting to pay legal wages.

23 174. As described above, DEFENDANTS willfully and systematically denied
24 PLAINTIFF and other Aggrieved Employees of minimum and overtime wage compensation for all
25 hours worked which resulted in the payment of less than statutorily required wages owed to them.
26 DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited
27 to, overtime wages and minimum wages, to which they were entitled to under California law. Thus,

28

³ See Lab. Code § 2699(f).

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

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

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

12 176. Based on information and belief, DEFENDANTS had and continue to have a
13 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
14 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
15 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
16 discretionary compensation, including but not limited to, any owed shift differentials) to Aggrieved
17 Employees upon separation of employment, in violation of California law, including but not limited
18 to, Labor Code section 227.3.

19 **Violation of Labor Code Section 208**

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

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

28 **Unlawful Deductions**

1 179. Labor Code Section 221 prohibits an employer from “collect[ing] or receiv[ing] from
2 an employee as any part of wages theretofore paid by said employer to said employee.”

3 180. Based on information and belief DEFENDANTS made unlawful deductions from
4 Aggrieved Employees paychecks during the relevant period including without limitation, deducting
5 business costs, including without limitation, expenses/costs for data usage/internet/electricity/utility
6 costs for remote work and/or the cost of cell phone use/other business expenses and/or deducting
7 wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for
8 negligently damaged property and/or unlawfully deducting transaction fees/pay/money card fees
9 and/or deducting costs advanced by DEFENDANTS. Such a practice is in violation of including but
10 not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under
11 Labor Code Section 2699.

12 **Unlawful Agreements and/or Unlawful Waivers**

13 181. Labor Code section 432.5 provides that “no employer . . . shall require any
14 employee or applicant for employment to agree, in writing, to any term or condition which is known
15 by such employer . . . to be prohibited by law.”

16 182. Based on information and belief, DEFENDANTS required PLAINTIFF, Aggrieved
17 Employees to agree in writing to unlawful conditions of employment including but not limited to
18 unlawful releases, unlawful waivers, and/or other unlawful agreements as a condition of obtaining
19 and/or continuing employment in violation of Labor Code sections 432.5 and/or 432.6.

20 183. Based on information and belief, DEFENDANTS required Aggrieved Employees to
21 sign meal period waivers that were universally signed as a condition of employment, including but
22 not limited to, during the onboarding process. By requiring Aggrieved Employees to sign unlawful
23 meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS
24 violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under
25 Labor Code section 432.6.

26 **Business Expense Violations**

27 184. California law requires employers to indemnify their employees for all necessary
28 expenditures incurred by the employee in direct consequence of the discharge of their duties or of

1 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
2 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
3 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
4 incurred by the employee enforcing the rights granted by this section.”

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

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

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

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

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

24 190. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
25 full reimbursement for all reasonable expenses associated with carrying out their duties required
26 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
27 expenses in violation of Labor Code section 2802.

28 191. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved

1 Employees have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

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

7 **Wage Statement Violations**

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

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

25 195. Moreover, due to violations detailed above, including but not limited to,
26 DEFENDANTS' failure to pay regular and overtime wages for all hours worked and failure to
27 provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226
28 by willfully failing to furnish PLAINTIFF and other Aggrieved Employees with accurate, itemized

1 wage statements that listed the gross and net wages earned and the correct applicable rates of pay
2 for all hours worked. Based on information and belief, DEFENDANTS failed to incorporate all
3 forms of non-discretionary compensation earned during the pay period into the regular rate of pay
4 for purposes of calculating the owed overtime rate, and as such, failed to display the proper overtime
5 rate(s) for each hour of overtime worked by PLAINTIFF and other Aggrieved Employees.

6 196. As explained above, wage statements issued by DEFENDANTS failed to list the
7 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of off-the-clock work
8 policies and practices described above), which results in a violation of Labor Code section 226(a).
9 Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor
10 Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

15 198. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
16 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
17 Employees over whether they received all wages owed to them.

18 199. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
19 they could not easily determine whether they received all wages owed to them and whether they
20 were paid for all hours worked.

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

23 201. 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.

4 202. 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. ⁴

7 **Untimely Payment of Final Wages**

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

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

21 205. Based on information and belief, upon separation of employment, Aggrieved
22 Employees’ final paychecks were not timely provided and/or did not include all wages owed, in
23 violation of Labor Code section 201-202. Based on information and belief, Aggrieved Employees’
24 final paychecks did not include all wages owed as they are devoid of, including but not limited to,
25 all owed minimum wages, overtime wages, premium wages, and/or all owed paid time off at the
26 properly accrued rates.

27 206. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These

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

1 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
2 256.

3 207. Under the provisions of PAGA and the above mentioned Labor Code sections,
4 including but not limited to Labor Code sections 201-203, 210, 226, 226.7, 256, 510, 512, 558,
5 558.1, 1194, 1197, 1197.1, 2699, 2699.3, 2802, and all applicable Wage Orders as well as all
6 interpretations of these laws by California Courts and administrative bodies, as well as any other
7 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 8 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
9 relevant California Labor Code provisions listed herein only if permitted by the
10 PAGA statute, pursuant to Labor Code section 2699(a); and
11 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
12 violations without a civil penalty recoverable under the PAGA, all in the default
13 amounts provided by Labor Code section 2699(f).

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

16 **PRAYER FOR RELIEF**

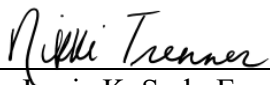
17 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
18 Class Members and Aggrieved Employees as follows:

- 19 1. For an order that the action be certified as a class action;
20 2. For an order that PLAINTIFF be appointed as class representative;
21 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
22 4. For compensatory damages according to proof;
23 5. For liquidated damages according to proof;
24 6. For penalties according to proof;
25 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
26 withheld from PLAINTIFF and the Class Members;
27 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
28 section 17200, *et seq.*, of the California Business and Professions Code;

- 1 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
2 10. For an order temporarily, preliminarily and permanently enjoining and restraining
3 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
4 11. For pre-judgment interest as permitted by law;
5 12. For civil penalties under Labor Code Section 2699;
6 13. For attorney's fees and costs reasonably incurred; and
7 14. For such other and further relief that the Court deems just and proper.

8 Dated: May 11, 2026

CROSNER LEGAL, PC

9
10 By: 
11 Jamie K. Serb, Esq.
12 Nikki Trenner, Esq.
13 Zachary M. Crosner, Esq.
14 Attorneys for Plaintiff,
WINSTON TOOLSIE

15 **DEMAND FOR JURY TRIAL**

16 PLAINTIFF demands a trial by jury on all claims so triable.

17
18 Dated: May 11, 2026

CROSNER LEGAL, PC

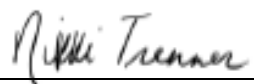
19
20 By: 
21 Jamie K. Serb, Esq.
22 Nikki Trenner, Esq.
23 Zachary M. Crosner, Esq.
24 Attorneys for Plaintiff,
25 WINSTON TOOLSIE
26
27
28

Exhibit A



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fax: (310) 510-6429

February 11, 2025

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Direct Travel, Inc.
Attn: Human Resources / Legal Department
7430 East Caley Avenue Suite 320E
Centennial, CO 80111

Corporation Service Company
Agent for Service of Process for:
Direct Travel, Inc.
1900 W Littleton Blvd
Littleton, CO 80120

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency and Direct Travel, Inc.
Date: February 11, 2025
Subject: *Winston Toolsie v. Direct Travel, Inc.*

Introduction

This office represents PLAINTIFF, Winston Toolsie (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entity and individual managing agents of said entity: Direct Travel, Inc. (hereinafter, this entity and its managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed directly and/or via a staffing agency by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed directly and/or via a staffing agency by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State and/or the address of the Secretary of State of the State of incorporation and/or the entity address as provided on wage statements issued by DEFENDANTS to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that

DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 208, 216, 221-223, 226, 226.7, 227.3, 245-248.6, 432.5, 432.6, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1199, 2751, 2802, 2810.5, and all applicable Wage Orders.

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

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

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

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

For example, DEFENDANTS, and each of them, share similar names, maintain the same agent for service of process and principal business office as provided to the California Secretary of State and based on information and belief, use some of the same attorneys and/or human resources personnel to oversee employment-related matters.

By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all

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

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

DEFENDANTS are Liable for All Temporary Agency Workers

Labor Code section 2810.3 requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor in California for the payment of wages. Section 2810.3 prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. It defines a client employer as a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor. It defines a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer's usual course of business. DEFENDANTS, and each of them, qualify as a client employer under Labor Code section 2810.3 for purposes of liability.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at the offices, home/remote offices, facilities and/or other location(s) in California, including but not limited to, the offices, home/remote offices, facilities and/or other locations in including but not limited to, San Bernardino County, California, among other counties in California. DEFENDANTS operate business under including but not limited to the following names: "Direct ATPI Global Travel" and/or "Direct Travel." DEFENDANTS, through its various locations, serve the including but not limited to, travel and/or business/consumer services industry.¹ Although DEFENDANTS may

¹ See <https://www.dt.com/>. Last visited on February 11, 2025.

operate a successful business or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title(s) of corporate travel advisor and/or a similar title(s) and/or job position(s) from in or around October 2024 through in or around December 2024. PLAINTIFF regularly worked at least approximately eight (8) hours per day, at least five (5) days per week, at times working more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek. DEFENDANTS assigned PLAINTIFF to work primarily on a remote basis, from PLAINTIFF's home, located in San Bernardino County, California. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. Based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were also compensated with non-discretionary compensation, including but not limited to, commissions, bonus/incentive pay and/or other non-discretionary compensation. For example, PLAINTIFF earned commission pay during PLAINTIFF's employment.

Labor Code Violations

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

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

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a

meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); Brinker, supra, 53 Cal.4th 1004.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, at times, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were forced to work through their meal periods, take interrupted, late, shortened meal periods and/or were restricted to their worksite and/or otherwise required to remain on-duty during unpaid meal periods due to including but not limited to, the need to complete assigned job duties.

Also, based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

For example, as described herein, PLAINTIFF was consistently required to complete pre-shift off-the-clock work on many if not all workdays, including but not limited to, booting up, logging into, starting DEFENDANTS' electronic systems, completing DEFENDANTS' two-step authentication process, and/or other pre-shift off-the-clock work tasks, which based on information and belief, DEFENDANTS failed to take into account when scheduling meal periods for PLAINTIFF, resulting in PLAINTIFF receiving late meal periods at times, in violation of California meal period law.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

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

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

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty/sixty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

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

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

PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

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

DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours

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

worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten hours.

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

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

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS’ automatic deduction and time rounding policies for shift start and shift end times and/or meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty/sixty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to

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

DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, based on information and belief, DEFENDANTS required, suffered and/or permitted NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work tasks prior to clocking in for the start of their shifts, after clocking out for the end of their shifts and/or during unpaid meal periods, resulting in DEFENDANTS' failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of wages owed to those NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for all time spent booting up, logging into, initiating and/or reinitiating DEFENDANTS' computer systems/electronic systems, resulting in pre-shift off-the-clock work and/or off-the-clock work during unpaid meal periods and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, prior to being able to clock in for the start of PLAINTIFF's scheduled shift each workday, PLAINTIFF was required to start and/or boot DEFENDANTS' computer/electronic systems and/or software and/or use a two-step authentication process to log in so as to have the systems running at the start of the scheduled shift. As such, PLAINTIFF spent at least approximately five (5) to ten (10) minutes before each scheduled shift preparing different work applications, starting DEFENDANTS' electronic systems, and/or undergoing DEFENDANTS' authentication/verification processes in order to clock in and begin his shift. This pre-shift work was off-the-clock and uncompensated resulting in unpaid minimum and overtime wages. After clocking out for the end of PLAINTIFF's shift each workday, PLAINTIFF was required to then close, log off and/or shut down DEFENDANTS' electronic programs and/or systems, resulting in at least approximately two (2) to three (3) minutes of post-shift off-the-clock work on many, if not all workdays, PLAINTIFF worked during PLAINTIFF's employment.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-related phone calls and/or messages they received to their phones/mobile devices and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks and/or work-related communications made for purposes of troubleshooting and/or upgrading DEFENDANTS' systems/internet systems for work, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, DEFENDANTS' electronic time-keeping system/app/call-in system malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system/app and/or wait for the

system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week. DEFENDANTS' failure to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

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

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

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

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

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

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

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

For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES earned non-discretionary piece-rate compensation, shift differential pay, non-discretionary bonuses/incentive pay and/or other non-discretionary compensation during pay periods in which they worked overtime, yet DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a

separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

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

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

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

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

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

In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all NON-

⁵ See Lab. Code §2699(f); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

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

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

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

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

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

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

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

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by

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

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

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

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a).

Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates and/or correct inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid, in violation of Labor Code section 226(a)(2) and/or Labor Code section (a)(6). For example, based on information and belief, at times, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES containing payment for hours worked during previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period for pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the pay corresponds with.

Based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that fail to accurately list all deductions, in violation of Labor Code section 226(a)(4).

For example, DEFENDANTS regularly failed to reimburse PLAINTIFF for business expenses, including but not limited to, cell phone/data usage and/or home utility expenses for remote work

incurred by PLAINTIFF each pay period, thereby deducting business costs from PLAINTIFF's earned wages each pay period, in violation of including but not limited to, Labor Code Section 221, and further failing to itemize these deductions for business costs, on PLAINTIFF's wage statements. As such, DEFENDANTS issued wage statements to PLAINTIFF that failed to accurately list all deductions, in violation of Labor Code section 226(a)(4).

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

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

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or failure to list a category containing the proper overtime rate.

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

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

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours

⁷ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

worked daily by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which allowed meal periods were provided each day.

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

Based on information and belief, DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of DEFENDANTS' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

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

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

Based on further information and belief, DEFENDANTS further failed and continue to fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

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

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁸

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

⁸ See Lab. Code §2699(f).

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off: California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, any owed shift differentials) to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's

daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay, paid time off and/or did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, commission pay, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, any owed shift differentials and/or commission pay).

For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck for at least approximately five (5) to six (6) days after PLAINTIFF's termination date, and PLAINTIFF's late final paycheck was devoid of all wages owed as it was devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, commission pay, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, any owed shift differentials and/or commission pay).

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

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

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES

with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

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

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

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

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

Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal vehicles and/or personal cell phones/mobile devices, internet and/or data usage for work related purposes.

For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from including but not limited to supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks, were required to download and use work-related applications on their personal cell phones/mobile devices and/or otherwise use their personal cell phones/personal devices to carry out their assigned job duties but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

For example, prior to being able to clock in for a scheduled shift each workday, DEFENDANTS required PLAINTIFF to use a two-step authentication process using PLAINTIFF's personal cell phone/mobile device to log into DEFENDANTS' computer system(s) and/or timekeeping system so as to have the system(s) running at the start of the scheduled shift, however, DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF incurred in connection with being required to use PLAINTIFF's personal cell phone/device to carry out PLAINTIFF's assigned job duties.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to work remotely, including but not limited to, from their homes. As a result of working from home, NON-EXEMPT AGGRIEVED EMPLOYEES were required to use their home internet, electricity, and other utilities in the discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue to lack a policy to reimburse employees who regularly increased utility expenses as a result of working from home. NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' increased utility and internet expenses were expenses for which DEFENDANTS were required to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES a reasonable percentage based on their required business use because said expenses were necessarily incurred by NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES as a direct consequence of the discharge of their duties of employment. However, DEFENDANTS failed to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at all and/or in full for these business expenses incurred as a result of being required to work from their homes, in violation of California law.

For example, as a result of working from home, PLAINTIFF was required to use PLAINTIFF's home internet, electricity, and other utilities in the discharge of PLAINTIFF's job duties, yet, DEFENDANTS failed to provide PLAINTIFF with reimbursement for these business expenses, including but not limited to, reimbursement for increased utility and/or internet expenses and/or other business expenses associated with remote work.

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using personal phone(s)/mobile device(s) for work-related purposes, home internet/utility expenses/expenses incurred from working remotely for DEFENDANTS and/or the cost of purchasing and/or maintaining hand tools/work equipment.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be

reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

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

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief DEFENDANTS made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period including without limitation, deducting business costs, including without limitation, expenses/costs for data usage/internet/electricity/utility costs for remote work and/or the cost of cell phone use/other business expenses and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or unlawfully deducting transaction fees/pay/money card fees and/or deducting costs advanced by DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

Unlawful Agreements and/or Unlawful Waivers: Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful releases, unlawful waivers, and/or other unlawful agreements as a condition of obtaining and/or continuing employment in violation of Labor Code sections 432.5 and/or 432.6.

Labor Code section 432.6(a), provides that "a person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right..."Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to sign meal period waivers that were universally signed as a condition of employment, including but not limited to, during the onboarding process. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES to sign unlawful meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

Conclusion

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

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

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

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

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

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Thank you for your attention to this matter.

Best Regards,



Kiara Bramasco, Esq.
CROSNER LEGAL, PC