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March 25, 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:

C T Corporation System
Agent for Service of Process for:
**The One Group, LLC; The One Group
Hospitality, Inc.; STK Rooftop San Diego,
LLC; STK Rebel San Diego, LLC; STK
San Francisco, LLC; STK Westwood,
LLC; and STK Westwood II, LLC**
Attn: CA Registered Agent Authorized
Employees:
Amanda Garcia, Gabriela Sanchez, Daisy
Montenegro, Beatrice Casarez-Barrientez,
Jessie Gastelum, John Montijo, Diana Ruiz,
Sarai Marin, Emanuel Jacobo, Gladys
Aguilera, Vivian Imperial, Carlos Paz,
Alberto Damonte, Peter Cayetano, Elsa
Montanez, Xenia Perez, Yesenia Carpenter,
and Jaqueline Mejia
330 N Brand Blvd #700
Glendale, CA 91203

**The One Group, LLC; The One Group
Hospitality, Inc.; STK Rooftop San Diego,
LLC; STK Rebel San Diego, LLC; STK
San Francisco, LLC; STK Westwood,
LLC; and STK Westwood II, LLC**

Attn: Human Resources / Legal Department
1624 Market Street, Suite 311
Denver, CO 80202

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; The One Group, LLC;
The One Group Hospitality, Inc.; STK Rooftop San Diego, LLC; STK Rebel San
Diego, LLC; STK San Francisco, LLC; STK Westwood, LLC; and STK
Westwood II, LLC
Date: March 25, 2025
Subject: *Daniel Allen and Nichole Teal Griffin v. The One Group, LLC, et al.*

Introduction

This office represents Plaintiffs Daniel Allen (“PLAINTIFF ALLEN”) and Nichole Teal Griffin (“PLAINTIFF GRIFFIN”), (hereinafter collectively “PLAINTIFFS”), in connection with PLAINTIFFS’ claims under the California Labor Code. PLAINTIFFS were, at all relevant times herein mentioned, employees of the following entities and individual managing agents of said entities: The One Group, LLC; The One Group Hospitality, Inc.; STK Rooftop San Diego, LLC; STK Rebel San Diego, LLC; STK San Francisco, LLC; STK Westwood, LLC; and/or STK Westwood II, LLC (hereinafter, these entities and their 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, PLAINTIFFS, on behalf of PLAINTIFFS, 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 give written notice (“NOTICE”) of PLAINTIFFS’ 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.

This NOTICE also serves to demonstrate PLAINTIFFS’ 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 PLAINTIFFS 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—reserve 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 PLAINTIFFS continue their 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, 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 PLAINTIFFS will base PLAINTIFFS' claims, PLAINTIFFS request that the LWDA regard this NOTICE as written notice of PLAINTIFFS's intent to seek civil penalties against DEFENDANTS.

PLAINTIFFS, on behalf of PLAINTIFFS, 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, 245-248.6, 432, 432.5, 432.6, 510, 511, 512, 551, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of PLAINTIFFS 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.

PLAINTIFFS are informed and believe and thereon allege 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).)

PLAINTIFFS believe and hereon assert that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFFS for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFFS 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 PLAINTIFFS at all relevant times herein, so as to be considered the joint employers of PLAINTIFFS and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of PLAINTIFFS 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 PLAINTIFFS, 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 PLAINTIFFS' 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.

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

General Information

DEFENDANTS are a global leader in "vibe dining," operating multiple restaurant brands. DEFENDANTS own, operate, manage and/or staff its employees to work at the full-service restaurants, steakhouses, vibe dining concepts, venues, facilities, and/or other locations including

but not limited to in Los Angeles, San Francisco, and San Diego, California. DEFENDANTS operate business under including but not limited to, the following brand name(s): “STK Steakhouse,” “STK,” “Kona Grill,” “Benihana,” “RA,” “RA Sushi,” “The One Group,” and/or “The One Group Hospitality” and/or “ONE Hospitality.” In addition to its full-service restaurants, DEFENDANTS also operate a signature turn-key food and beverage service, which operates under including but not limited to, the name(s) “ONE Hospitality.” DEFENDANTS, through its various locations, serve the restaurant and/or hospitality industry.¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California’s labor laws.

PLAINTIFFS are former non-exempt employees of DEFENDANTS.

PLAINTIFF ALLEN worked for DEFENDANTS as a server, and/or similar title(s) and/or position(s) from in or August 2022 and continuing through in or around February 2025. PLAINTIFF ALLEN regularly worked at least approximately five (5) to fourteen (14) hours per day. DEFENDANTS assigned PLAINTIFF ALLEN to work at its location(s) in San Francisco, which operates under the name(s) “STK” and/or “STK Steakhouse.”

PLAINTIFF GRIFFIN worked for DEFENDANTS as a server and/or similar title(s) and/or position(s) from in or around August 2020 through in or around May 2024. PLAINTIFF GRIFFIN regularly worked at least six (6) to twelve (12) plus hours per day, at least five (5) to seven (7) days per week, at times, working more than seven (7) days consecutively. DEFENDANTS assigned PLAINTIFF GRIFFIN to work at its locations in Los Angeles, San Diego, and San Francisco, which operate under including but not limited to the name(s): “STK” and/or “STK Steakhouse.”

DEFENDANTS paid PLAINTIFFS an hourly rate for time counted by DEFENDANTS as hours worked. Based on information and belief, PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES also earned tips as part of their compensation.

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

¹ See <https://togrp.com/> and <https://stksteakhouse.com/en-us/locations/>. Last visited on March 21, 2025

the first meal period was not waived. *Ibid.* Upon information and belief, PLAINTIFFS did not sign a valid meal period waiver throughout PLAINTIFFS' 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.

PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of more than five (5) hours, entitling them to at least one meal period.

PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks.

For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times interrupted during purported meal periods, had meal periods cut short and/or were restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

For example, PLAINTIFF ALLEN was consistently interrupted during unpaid meal periods, required to return to work while clocked out for meal periods and/or otherwise received legally noncompliant meal periods during the liability period. For example, PLAINTIFF ALLEN was frequently required to complete work tasks while clocked out for purported meal periods.

Similarly, PLAINTIFF GRIFFIN was required to work during her meal periods, take shortened and/or interrupted meal periods due to lack of coverage and/or the need to complete assigned job duties.

Also, at times, PLAINTIFF GRIFFIN was forced to take her first meal period late (i.e. after working five (5) or more hours) due to lack of coverage and/or the need to complete assigned job duties.

Based on information and belief, DEFENDANTS would unlawfully edit the clock in and out times for his and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods in order to display at least a thirty minute off-duty meal period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES' to complete work-related tasks during their meal periods and/or otherwise take noncompliant meal periods.

Also, 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.

For example, neither PLAINTIFF ALLEN nor PLAINTIFF GRIFFIN received any version of a second meal period when working shifts lasting longer than ten (10) hours.

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 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.

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 PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

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 PLAINTIFFS' and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty 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 PLAINTIFFS 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 PLAINTIFFS' 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 PLAINTIFFS 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 PLAINTIFFS 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.

PLAINTIFFS are further informed and believe and thereon allege 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 PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

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

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

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 PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFFS 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, NON-EXEMPT AGGRIEVED EMPLOYEES were at times unable to take compliant rest periods due to their need to complete assigned job duties, 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.

For example, PLAINTIFF ALLEN was frequently required to work during any rest periods due to the need to complete assigned job duties.

Similarly, PLAINTIFF GRIFFIN did not receive rest periods in a structured manner such that any rest periods were usually cut short, interrupted and/or on-duty and were only taken once tasks were completed, and/or as time permitted.

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. For example, DEFENDANTS failed to provide PLAINTIFF with 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 PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during rest periods.

As explained herein, 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 PLAINTIFFS 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, 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.

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 PLAINTIFFS 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 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, 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, DEFENDANTS have a policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to complete 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.

For example, PLAINTIFF ALLEN was consistently required to complete work tasks while clocked out for purportedly off-duty meal periods, resulting in DEFENDANTS' failure to compensate PLAINTIFF ALLEN for all hours worked and the underpayment of wages owed.

Similarly, PLAINTIFF GRIFFIN was required to work during her meal periods, take shortened and/or interrupted meal periods due to lack of coverage and/or the need to complete assigned job duties, resulting in DEFENDANTS' failure to compensate PLAINTIFF GRIFFIN for all hours worked and the underpayment of wages owed.

Based on information and belief, DEFENDANTS would unlawfully edit the clock in and out times for NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods in order to display at least a thirty minute off-duty meal period during many if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required NON-EXEMPT AGGRIEVED EMPLOYEES' to complete work-related tasks during unpaid meal periods, thereby failing to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of owed wages.

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 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, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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.²

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

² 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 PLAINTIFFS 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 PLAINTIFFS 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.

For example, DEFENDANTS failed to pay PLAINTIFFS 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.

For example, DEFENDANTS did not compensate PLAINTIFF ALLEN with twice PLAINTIFF ALLEN's regular rate of pay for all time worked beyond twelve (12) hours per workday.

Also, DEFENDANTS failed to compensate PLAINTIFF GRIFFIN with twice PLAINTIFF GRIFFIN's regular rate of pay for all time worked beyond eight (8) hours on the seventh consecutive day of work in a work week

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, 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 PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 511, 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.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFFS 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 PLAINTIFFS seek all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of PLAINTIFFS 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 PLAINTIFFS and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFFS and all NON-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 PLAINTIFFS 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, PLAINTIFFS alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

PLAINTIFFS 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, PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFFS 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 PLAINTIFFS and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFFS 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.³

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

³ 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).

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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS' 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 PLAINTIFFS 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 PLAINTIFFS and NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFFS 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.

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

As DEFENDANTS failed to provide PLAINTIFFS and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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, at times, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid, for example, when issued wage statements contained retroactive earnings, but the wage statements failed to list the inclusive dates of the pay period during which the retroactive pay was earned and/or the total number of [retroactive] hours worked, in violation of Labor Code sections 226(a)(6) and/or 226(a)(2).

DEFENDANTS' failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFFS and caused and continue to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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).

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFFS, 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 PLAINTIFFS, 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.⁴

Violation of California Day of Rest Law: Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" their employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, DEFENDANTS have and continue to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551.

For example, at times, PLAINTIFF GRIFFIN was required to work at least seven days consecutively in a workweek, in violation of Labor Code Section 551. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

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

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, suitable resting facilities, seating, reporting time pay, 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.

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

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 PLAINTIFFS 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 PLAINTIFFS and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFFS and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFFS 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, 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, were not timely provided with all owed vacation pay/paid time off and/or did not include all wages owed, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay 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).

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

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.⁵

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

⁵ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

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

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

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

Based on information and belief, PLAINTIFFS 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, uniforms/work clothing/work shoes/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal cell phones/mobile devices, internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls.

For example, 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 and/or were required to download and use work-related applications on their personal cell phones/mobile devices but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

For example, PLAINTIFF ALLEN was frequently required to respond to work-related calls and/or

messages on PLAINTIFF ALLEN's personal cell phone/mobile device without receiving any reimbursement from DEFENDANTS for the business expenses PLAINTIFF ALLEN incurred in connection therewith, including but not limited to, increased data plan charges and/or other costs associated with being required to use his personal cell phone/mobile device for work.

Similarly, PLAINTIFF GRIFFIN was required to use her personal cell phone/personal device to carry out PLAINTIFF GRIFFIN's assigned job duties including without limitation for responding to work-related calls and/or messages, however, DEFENDANTS failed to provide PLAINTIFF GRIFFIN with any and/or full reimbursement for the business expenses PLAINTIFF GRIFFIN incurred in connection therewith.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFFS, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFFS, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFFS, 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 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 confidentiality agreements/non-disclosure agreements, noncompete agreements, 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 other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFFS 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. Alternatively, PLAINTIFFS request that the agency and division inform PLAINTIFFS if they do not intend to investigate these violations so that PLAINTIFFS may file a lawsuit with respect to the allegations discussed in this NOTICE.

If the LWDA elects not to take any action with respect to any of the foregoing claims, PLAINTIFFS will seek these penalties in a civil action, on behalf of PLAINTIFFS 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:

Kiara Bramasco, Esq.
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, appearing to read "Kiara Bramasco", written in a cursive style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC