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9 Attorneys for Plaintiff JOSE R. LOYA MEDINA  
10 on behalf of himself, the State of California, and others similarly  
11 situated and aggrieved

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF GLENN**

14 JOSE R. LOYA MEDINA, on behalf of  
15 himself, the State of California, and others  
16 similarly situated and aggrieved

17 Plaintiff,

18 v.

19 RUMIANO CHEESE CO., a California  
20 Corporation; and DOES 1-100, inclusive,

21 Defendants.  
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Case No.: **22 CV 03007**

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

By Fax

1 Plaintiff, JOSE R. LOYA MEDINA (“PLAINTIFF”), an individual on behalf of himself, the  
2 State of California, and all other Aggrieved Employees (as defined below), hereby files this  
3 representative action against Defendants RUMIANO CHEESE CO., a California Corporation; and  
4 DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is  
5 informed and believes and thereon alleges as follows:

### 6 **INTRODUCTION**

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

### 13 **JURISDICTION AND VENUE**

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

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

### 22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of  
24 California and a citizen of the State of California. PLAINTIFF worked for DEFENDANTS for  
25 approximately eight to nine months, until in or around late September 2021. PLAINTIFF worked  
26 for DEFENDANTS in the State of California as a non-exempt employee.

27 5. PLAINTIFF worked for DEFENDANTS in various positions including but not  
28 limited to as a packaging or production worker and/or similar title. PLAINTIFF worked for

1 DEFENDANTS in various departments including but not limited to the cheese department, butter  
2 department and protein powder department.

3 6. Defendant RUMIANO CHEESE CO., is a California Corporation that, at all relevant  
4 times, was authorized to do business within the State of California and is doing business in the State  
5 of California.

6 7. DEFENDANTS own, operate, or otherwise manage the manufacturing and  
7 distribution of various dairy products. DEFENDANTS own, operate, or otherwise manage multiple  
8 facilities/locations including but not limited to locations in Crescent City, California, and Willows,  
9 California.

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

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

26 **JOINT LIABILITY**

27 10. Under California law, the definition of the terms “to employ” are broadly construed  
28

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

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

24 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times  
25 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized  
26 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices  
27 across all of their locations/facilities and subjected all Aggrieved Employees to these same policies  
28 and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is

1 informed and believes that: (1) there is common ownership in, and financial control, in  
2 DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control  
3 over the day-to-day operations and employment matters, including the power to hire and fire, set  
4 schedules, issue employee policies, and determine rates of compensation across its locations in  
5 California; (3) DEFENDANTS utilize the same policies and procedures for all California  
6 employees, including issuing the same employee handbooks and other form agreements; (4)  
7 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee  
8 employment matters; and, (6) DEFENDANTS share employees.

9       13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant  
10 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and other Aggrieved  
11 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that  
12 DEFENDANTS, exercised sufficient control over PLAINTIFF and other Aggrieved Employees'  
13 wages, hours and working conditions, and/or suffered or permitted them to work so as to be  
14 considered their joint employers.

15       14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a  
16 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,  
17 time-keeping practices, meal and rest periods, reimbursement of business expenses and other  
18 working conditions that were distributed to, and/or applied to PLAINTIFF and other Aggrieved  
19 Employees, and further that DEFENDANTS uniformly compensated and controlled their wages in  
20 a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and other Aggrieved  
21 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS  
22 collectively retained the right to terminate PLAINTIFF's and Aggrieved Employees' employment  
23 with or without cause. Upon information and belief, DEFENDANTS further collectively  
24 represented to PLAINTIFF and other Aggrieved Employees in writing the details of their  
25 compensation, and the manner in which they were to take meal and rest periods, the procedures  
26 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable  
27 to PLAINTIFF and other Aggrieved Employees by which DEFENDANTS collectively would  
28 evaluate their wage rates.

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

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

17. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS 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.

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

## PAGA ALLEGATIONS

19. PLAINTIFF brings this action under the PAGA, as a representative action on behalf of himself, 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:

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

20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly,

1 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other 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 he was jointly employed by DEFENDANTS and is thereby affected by one or more  
5 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th  
6 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by  
7 the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

### 8 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

9 21. On August 26, 2022, PLAINTIFF, through his counsel, gave written notice by online  
10 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that  
11 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged  
12 in this Complaint (“PAGA Letter”). Th PAGA Letter was also sent to DEFENDANTS via certified  
13 mail.

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

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

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

### 25 **FACTUAL AND LEGAL ALLEGATIONS**

26 25. During the PAGA period, PLAINTIFF, and other Aggrieved Employees worked for  
27 DEFENDANTS in the State of California as non-exempt employees. At all times referenced herein,  
28 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or

1 permitted them to work.

2       26. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.  
3 PLAINTIFF worked for DEFENDANTS in various positions including but not limited to as a  
4 packaging or production worker and/or similar title. PLAINTIFF worked for DEFENDANTS in  
5 various departments including but not limited to the cheese department, butter department, and  
6 protein powder department. PLAINTIFF regularly worked at least eight (8) hours per day, at least  
7 five (5) days per week.

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

10       28. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate  
11 PLAINTIFF and other Aggrieved Employees for all hours worked, resulting in the underpayment  
12 of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved  
13 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time  
14 rounding policies, and failure to relieve employees of all duties/employer control during unpaid  
15 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained  
16 below.

17       29. Based on information and belief, DEFENDANTS implemented a policy and/or  
18 practice of rounding meal period start and end times and/or automatically deducting at least thirty  
19 minutes per shift for meal periods, despite having actual and/or constructive knowledge that  
20 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during  
21 purported meal periods and/or were otherwise not afforded lawful meal periods (as explained  
22 below), depriving PLAINTIFF and Aggrieved Employees of all wages owed.

23       30. Based on information and belief, Aggrieved Employees were not paid for all hours  
24 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours  
25 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.  
26 For example, based on information and belief, DEFENDANTS failed to compensate PLAINTIFF  
27 and other Aggrieved Employees for off the clock work duties including, time spent donning and  
28 doffing personal protective equipment and clothing prior to clocking into work and/or after clocking

1 out of work. At times, PLAINTIFF first put on his hair net and/or beard net and other protective  
2 clothing prior to clocking into work and/or after clocking out of work. This work time was not  
3 recorded and not compensated. Based on information and belief, DEFENDANTS did not instruct  
4 PLAINTIFF and other Aggrieved Employees that time spent donning and doffing was work time  
5 that should be recorded and compensated, thereby forcing Aggrieved Employees to complete work  
6 that was not recorded and not compensated.

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

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

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

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

28 35. Based on information and belief, DEFENDANTS failed and continue to fail to pay

1 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours  
2 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in  
3 a work week, in violation of California's overtime laws.

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

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

18 38. For example, PLAINTIFF was regularly forced to take late meal periods due to the  
19 nature and constraints of his job duties (including but not limited to preparing cheese packages,  
20 preparing butter, and/or cleaning machines/equipment), and due to lack of relief workers available.  
21 For instance, time records for PLAINTIFF show that on September 13, 2021, he clocked into work  
22 at 2:52 am and clocked out for a meal period at 8:04 am (more than 5 hours after clocking into  
23 work). Similarly, on September 14, 2021, PLAINTIFF clocked into work at 2:52 am and clocked  
24 out for a meal period at 8:50 am (almost 6 hours after clocking into work.) Likewise, on September  
25 15, 2021, PLAINTIFF clocked into work at 2:52 am and clocked out for a meal period at 8:06 am  
26 (more than 5 hours after clocking into work). These are only a few examples of time records  
27 demonstrating that PLAINTIFF's meal periods were consistently late. Based on information and  
28 belief, DEFENDANTS' time records for PLAINTIFF demonstrate that PLAINTIFF regularly took

1 late meal periods. Based on further information and belief, DEFENDANTS' time records for other  
2 Aggrieved Employees will similarly demonstrate late meal periods.

3 39. Moreover, at times, DEFENDANTS required Aggrieved Employees to clock out for  
4 a meal period but forced them to continue working while off-the-clock. Aggrieved Employees then  
5 took a purported meal period at a later time. This policy and practice resulted in late meal periods  
6 and unpaid wages.

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

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

15 42. Based on information and belief, DEFENDANTS required Aggrieved Employees to  
16 complete off-the-clock work prior to their scheduled shift time (including pre-shift off-the-clock  
17 donning of protective equipment/clothing described above) which DEFENDANTS failed to take  
18 into account when scheduling meal periods for Class Members. Based on information and belief,  
19 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

26 44. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees  
27 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)  
28 minute second meal period. For example, when PLAINTIFF worked more than ten hours in a shift,

1 PLAINTIFF was not provided with a second meal period. Based on information and belief,  
2 DEFENDANTS provide a single meal period per shift irrespective of the number of hours worked,  
3 and that single meal period is not legally compliant.

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

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

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

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

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

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

5           51.     Based on information and belief, DEFENDANTS did not have a have a compliant  
6 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in  
7 practice. For example, DEFENDANTS failed to provide PLAINTIFF with duty-free rest periods  
8 due to lack of coverage available to relieve PLAINTIFF of his work duties. As a result, PLAINTIFF  
9 was forced to continue working his shifts without any rest periods. PLAINTIFF worked shifts of  
10 eight hours or more without a single rest period. Based on information and belief, DEFENDANTS  
11 have a policy and/or practice of providing Aggrieved Employees with a single purported meal period  
12 and fails to provide any rest periods whatsoever.

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

17           53.     Based on information and belief, DEFENDANTS implemented policies and/or  
18 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and  
19 DEFENDANTS' control during rest periods.

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

23           55.     Furthermore, DEFENDANTS failed to pay a rest period premium for each day in  
24 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in  
25 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each  
26 workday a proper rest period was not provided and/or failed to pay the proper rest period premium  
27 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,  
28 shift differential pay, and/or other non-discretionary compensation into the regular rate of

1 compensation for purposes of calculating the owed rest period premium.

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

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

16       **58. Failure to Produce Records.** Based on information and belief, DEFENDANTS  
17 failed and continue to fail to produce or make available a current or former employee's personnel  
18 records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432,  
19 and/or the applicable Wage Order. For example, PLAINTIFF sent a request for payroll and  
20 personnel records to DEFENDANTS on December 16, 2021, and January 24, 2022. Yet,  
21 DEFENDANTS failed to produce complete records within the time periods delineated by California  
22 labor law. Based on information and belief, DEFENDANTS failed and continue to fail to timely  
23 produce complete payroll and personnel records when requested by other Aggrieved Employees,  
24 resulting in violations of Labor Code sections 226(b)-(c), 1198.5, and 432 and the applicable Wage  
25 Order.

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

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

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

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

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

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

23 64. **Failure to Provide Suitable Seating.** Based on information and belief,  
24 DEFENDANTS failed to provide Aggrieved Employees with suitable seating, and when such  
25 employees were not engaged in duties which required them to stand, no seating was placed in  
26 reasonable proximity to their workstations. For example, during his employment by  
27 DEFENDANTS, PLAINTIFF was not provided with access to suitable seating.

28 65. Moreover, based on information and belief, the nature of the work reasonably

1 permitted the use of seats for at least part of the time that Aggrieved Employees were working.  
2 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of  
3 their employment, yet there were no suitable seats in reasonable proximity to the work area and use  
4 of seats would not interfere with the performance of their duties.

5 66. DEFENDANTS' Aggrieved Employees worked in various positions. The nature of  
6 Aggrieved Employees' work reasonably permitted the use of seats. However,  
7 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'  
8 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections  
9 1198, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699.

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

15 68. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,  
16 recordkeeping provisions, minimum wages and overtime wages, suitable seating, and business  
17 expenses result in separate violations of sections 1198 and 1199.

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

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

1 Aggrieved Employees lower wages than those they were entitled to while purporting that  
2 PLAINTIFF and other Aggrieved Employees were properly paid.

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

9       72.     Based on information and belief, DEFENDANTS shifted the costs of doing business  
10 onto Aggrieved Employees by requiring them to pay for business expenses, including but not  
11 limited to use of Aggrieved Employees' personal mobile phone and data usage for work related  
12 purposes including but not limited to receiving and responding to work related messages and/or  
13 phone calls. For example, at times PLAINTIFF received work related messages and/or phone calls  
14 to his personal phone including but not limited to messages/calls related to modifying his work  
15 schedule.

16       73.     Based on information and belief, DEFENDANTS regularly failed to reimburse and  
17 indemnify Class Members for these business expenses. Pursuant to California Labor Code section  
18 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable  
19 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties  
20 assigned by DEFENDANTS.

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

24       75.     **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS either  
25 failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick  
26 leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the accrued  
27 sick leave hours on the correct number of hours worked (as a result of the rounding/automatic  
28 deduction policies and practices for meal periods and/or shift start and end times/other required off-

1 the-clock work described above) and by failing to incorporate multiple rates of pay and/or all non-  
2 discretionary remuneration, including but not limited to, non-discretionary bonuses, shift  
3 differential pay, commission and/or piece rate compensation and/or other non-discretionary  
4 compensation into the sick leave pay rate calculation.

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

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

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

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

27 80. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides  
28 that all employers with 26 or more employees are required to provide up to 80 hours for covered

1 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care  
2 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS  
3 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-  
4 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to  
5 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

17       **83.** These violations subject DEFENDANTS to civil penalties under Labor Code section  
18 203, 210, and/or 256.

19       **84. Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,  
20 DEFENDANTS had and continue to have a uniform policy and practice of failing to allow  
21 Aggrieved Employees to use their earned vacation/paid time off during their employment and failing  
22 to pay all vested, accrued paid time off to Aggrieved Employees upon separation of employment,  
23 in violation of California law, including but not limited to, Labor Code section 227.3.

24       **85. Unlawful Agreements-Unlawful Criminal History Inquiries. Unlawful Financial**  
25 **and Criminal Background Checks:** Based on information and belief, DEFENDANTS required  
26 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not  
27 limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing  
28 employment in violation of Labor Code section 432.5.

1           86.     Based on information and belief, DEFENDANTS ordered unlawful financial credit  
2 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved  
3 Employees to provide ongoing written consent to the unlawful credit checks as a condition of  
4 employment, in violation of California and Federal law, which results in a further violation of Labor  
5 Code section 432.5.

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

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

21           89.     By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or  
22 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code  
23 section 432.5.

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

1           91.     Based on further information and belief, DEFENDANTS knew that requiring  
2 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a  
3 condition of obtaining and/or holding employment was unlawful.

4           92.     By requiring Aggrieved Employees to agree in writing to unlawful provisions as a  
5 condition of employment, DEFENDANTS violated Labor Code section 432.5.

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

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

16          95.     PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS  
17 engaged in these same herein described unlawful practices and that DEFENDANTS applied these  
18 same herein described unlawful practices to all Class Members that it applied to PLAINTIFF.

19                                   **FIRST CAUSE OF ACTION**

20           **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**

21                                   **2698, *ET SEQ.***

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

24          96.     PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

25                                   **Failure to Keep Accurate Records**

26          97.     California Labor Code § 1174 requires employers to keep “accurate and complete”  
27 payroll records showing, among other things, the hours worked daily by all non-exempt employees.  
28 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the

1 times during which all owed meal periods were provided each day.

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

7 99. DEFENDANTS' failure to keep "accurate and complete" payroll records for  
8 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all  
9 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under  
10 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and  
11 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay  
12 period during which the referenced statutes and Wage Order provisions were violated.<sup>1</sup>

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

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

20 101. Section (b) of Labor Code section 226 further requires employers to "afford current  
21 and former employees the right to inspect or receive a copy of records pertaining to their  
22 employment upon reasonable request to the employer." Section (c) of Labor Code section 226  
23 provides that, "an employer who receives a written or oral request to inspect or receive a copy of  
24 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with

25 <sup>1</sup> Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor  
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the  
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil  
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes  
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each  
pay period during which the employee was underpaid") (emphasis added).

1 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A  
2 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe  
3 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from  
4 the employer. Lab. Code section 226(f).

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

14 103. As explained above, DEFENDANTS fail to timely produce or make available  
15 Aggrieved Employees’ personnel records and/or payroll records when requested pursuant to Labor  
16 Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject  
17 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

#### 18 **Meal Period Violations**

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

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

1 the employer and employee; and (2) if an employee's total work period in a day is over ten (10)  
2 hours but no more than twelve (12) hours, the required second meal period may be waived by mutual  
3 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon

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

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

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

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

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

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

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

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

17 **Rest Period Violations**

18 114. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer  
19 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours  
20 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period  
21 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4<sup>th</sup> 1004 (2012),  
22 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for  
23 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to  
24 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at  
25 1029). The rest period requirement obligates employers to permit and authorize employees to take  
26 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control  
27 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5<sup>th</sup>  
28 257. If the employer fails to provide any required rest period, the employer must pay the employee

1 one hour of pay at the employee's regular rate of compensation for each workday the employer did  
2 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and  
3 applicable IWC Wage Order, §12(B).

4 115. PLAINTIFF and other Aggrieved Employees did not receive legally compliant,  
5 timely 10-minute rest periods for every four (4) hours worked or major fraction thereof. As  
6 explained above, any purported rest periods were late, interrupted, cut short, on duty, and/or  
7 otherwise subject to DEFENDANTS' control due to the nature and constraints of Aggrieved  
8 Employees' job duties, understaffing, and/or commentary from supervisors pressuring Aggrieved  
9 Employees to skip rest periods completely or otherwise take non-compliant rest periods. In fact,  
10 PLAINTIFF consistently worked shifts lasting eight hours or more without a single rest period.

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

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

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

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

27 **Minimum and Overtime Wage Violations**

28 120. California law provides that employees in California must be paid for all hours

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

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

13 122. As alleged herein, PLAINTIFF and Aggrieved Employees regularly worked  
14 minimum and overtime hours for which they were not compensated as required by California law.

15 123. DEFENDANTS violated California's minimum and overtime wage laws by failing  
16 to compensate PLAINTIFF and the Aggrieved Employees for all hours worked by virtue of, among  
17 other things, DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-  
18 clock/unpaid work completed during meal periods, payment according to scheduled hours worked  
19 rather than actual hours worked, pre-shift, post-shift and/or otherwise off-the-clock work (described  
20 above), which resulted in the failure to account for all hours worked and thus the denial of minimum  
21 and overtime wages.

22 124. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and  
23 Aggrieved Employees for all hours worked.

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

28 126. Based on information and belief, DEFENDANTS further violated California's

1 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not  
2 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary  
3 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to  
4 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of  
5 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and  
6 other Aggrieved Employees.

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

13 128. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,  
14 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS  
15 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC  
16 Wage Orders, section 20.

17 **Statutory Wage Violations**

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

1           **Refusal to Make Payment**

2           130. Labor Code section 216 declares unlawful an employer's refusal to pay wages due  
3 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated  
4 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all  
5 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each  
6 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*  
7 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil  
8 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for  
9 each Aggrieved Employee, for each pay period during which the statute provisions were violated.<sup>2</sup>

10           **Business Expense Violations**

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

17           132. Among other things, under California law, when employees must use their personal  
18 cellphones for work-related purposes, the employer must reimburse them for a reasonable  
19 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228  
20 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was  
21 required to use their personal cellphone for work-related purposes and not reimbursed for the use.  
22 *Id.* 1144-1145. Further, "any contract or agreement, express or implied, made by any employee to  
23 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive  
24 any employee or his personal representative of any right or remedy to which he is entitled to under  
25 the laws of this State." *See* Cal. Lab. Code section 2804.

26 \_\_\_\_\_  
27 <sup>2</sup> Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty  
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,  
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1           133. As described above, PLAINTIFF and the Aggrieved Employees were improperly  
2 required to pay for business expenses that are legally the responsibility of the employer, including  
3 but not limited to use of a personal cell phone and data usage.

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

8           135. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved  
9 Employees have suffered injury in that they were not completely reimbursed as mandated by  
10 California law.

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

15           **Wage Statement Violations**

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

25           138. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees  
26 with meal and rest periods that complied with Labor Code section 226.7, the wage statements  
27 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail  
28 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)

1 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net  
2 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in  
3 effect during the pay period and the corresponding number of hours worked at each hourly rate by  
4 the employee, in violation of Labor Code section 226(a)(9).

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

15 140. As explained above, wage statements issued by DEFENDANTS failed to list the  
16 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,  
17 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and  
18 employer control during unpaid meal periods, payment according to scheduled hours worked rather  
19 than actual hours worked, and/or other off-the-clock work policies and practices all described in  
20 greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all  
21 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section  
22 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

26 142. DEFENDANTS' failure to accurately list all hours worked on all wage statements  
27 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved  
28 Employees over whether they received all wages owed to them.

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

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

7           145. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and  
8 Aggrieved Employees with accurate, itemized wage statements.

9           146. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.  
10 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period  
11 during which the statute provisions were violated. <sup>3</sup>

12           **Failure to Provide Suitable Seating**

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

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

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

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

26           149. Suitable seating is one of the worker protections covered by California's Wage  
27 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly

28           <sup>3</sup> Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*  
2 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

3 150. As alleged herein, based on information and belief, the nature of Aggrieved  
4 Employees' work reasonably permitted the use of seats, but no such seats were provided. Moreover,  
5 there were periods of time when Aggrieved Employees were not engaged in active duties of their  
6 employment, yet there were no suitable seats in reasonable proximity to the work area even when  
7 the use of seats would not interfere with the performance of their duties.

8 151. As such, DEFENDANTS violated and continue to violate section 14(A)-(B) of all  
9 applicable Wage Orders and Labor Code sections 1198 and 1199 by failing to provide suitable  
10 seating to PLAINTIFF and other Aggrieved Employees, subjecting DEFENDANTS to civil  
11 penalties under Labor Code sections 1199 and 2699.

12 **Standard Conditions of Labor Violations**

13 152. Together, Labor Code sections 1198 and 1199 make unlawful any employment of  
14 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,  
15 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including  
16 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'  
17 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,  
18 suitable seating and minimum/overtime wages result in separate violations of sections 1198 and  
19 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

20 **Sick Leave Violations**

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

28 154. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees

1 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor  
2 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used  
3 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and  
4 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

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

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

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

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

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

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

25 161. Labor Code § 248.2 provides that all employers with 26 or more employees are  
26 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental  
27 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.  
28 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved

1 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information  
2 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of  
3 Labor Code section 248.6.

4 **Untimely Payment of Final Wages**

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

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

18 164. Based on information and belief, DEFENDANTS fail to timely pay final wages to  
19 Aggrieved Employees upon separation of employment in violation of Labor Code sections 201-202  
20 and/or did not include all owed vacation pay and/or fail to timely provide final wages with all owed  
21 vacation and/or paid time off. Based on information and belief, DEFENDANTS untimely provide  
22 final wages to Aggrieved Employees without regard to the timing requirements of Labor Code  
23 sections 201-202.

24 165. Moreover, final paychecks, once provided to Aggrieved Employees did not include  
25 all wages owed as they are devoid of, including but not limited to, all owed minimum wages,  
26 overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages  
27 at the properly accrued rates.

28 166. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These

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

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

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

10 168. Based on information and belief, DEFENDANTS had and continue to have a  
11 uniform policy and practice of failing to allow Aggrieved Employees to use their earned  
12 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off  
13 to Aggrieved Employees upon separation of employment, in violation of California law, including  
14 but not limited to, Labor Code section 227.3.

15 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

16 169. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall  
17 require any employee or applicant for employment to agree, in writing, to any term or condition  
18 which is known by such employer...to be prohibited by law." Based on information and belief,  
19 DEFENDANTS required and continue to require PLAINTIFF and Aggrieved Employees to agree  
20 in writing to submit to unlawful criminal and/or financial checks as a condition of obtaining and/or  
21 continuing employment.

22 170. The California Labor Code places certain procedural and substantive limits on an  
23 employers' ability to conduct employee background checks and on how employers can use the  
24 information they obtain through those background checks. Labor Code section 1024.5 states that  
25 employers, except for financial institutions, may order a credit check only if the individual works  
26 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,  
27 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies  
28 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15

1 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee  
2 background check, including but not limited to identifying an appropriate reason for the background  
3 check, a separate consent form with required disclosures and certain formatting requirements,  
4 additional forms such as a summary of rights, a way by which to request a copy of the report, as  
5 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

23 Unlawful Inquires into Criminal History

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

28 177. Upon information and belief, DEFENDANTS, in violation of California law,

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

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

10 179. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to  
11 various unlawful provisions as a condition of employment.

12 180. Under the provisions of PAGA and the above mentioned Labor Code sections,  
13 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,  
14 227.3, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197,  
15 1197.1, 1198, 1198.5, 1199, 2699.3, 2802, 2810.5, and all applicable Wage Orders as well as all  
16 interpretations of these laws by California Courts and administrative bodies, as well as any other  
17 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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**PRAYER FOR RELIEF**

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

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

Dated: November 1, 2022

**CROSNER LEGAL, PC**

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