

1 MICHAEL R. CROSNER (SBN 41299)
2 ZACHARY M. CROSNER (SBN 272295)
3 zach@crosnerlegal.com
4 JAMIE K. SERB (SBN 289601)
5 jamie@crosnerlegal.com
6 MICHAEL W. JONES (SBN 312831)
7 michael.jones@crosnerlegal.com
8 **CROSNER LEGAL, PC**
9 9440 Santa Monica Blvd. Suite 301
10 Beverly Hills, CA 90210
11 Tel: (310) 496-5818
12 Fax: (310) 510-6429

Assigned for All Purposes
Judge Randall J. Sherman

cx-105

13 Attorneys for Plaintiff VALERIA BOLANOS,
14 on behalf of herself, the State of California,
15 and others similarly situated and aggrieved

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF ORANGE**

18 VALERIA BOLANOS, on behalf of
19 herself, the State of California, and others
20 similarly situated and aggrieved,

21 Plaintiff,

22 v.

23 NEWPORT FAB, LLC, a Delaware
24 Limited Liability Company; TOWER
25 SEMICONDUCTOR NEWPORT
26 BEACH, INC., a Delaware Corporation;
27 JAZZ SEMICONDUCTOR TRUSTED
28 FOUNDRY, INC., a Delaware
Corporation; TOWER
SEMICONDUCTOR USA, INC., a
California Corporation; JAZZ
SEMICONDUCTOR, INC., an unknown
entity; and DOES 1-100, inclusive,

Defendants.

Case No.: 30-2022-01289150-CU-OE-CXC

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

1 Plaintiff VALERIA BOLANOS ("PLAINTIFF" or "PLAINTIFF BOLANOS"), an
2 individual on behalf of herself, the State of California, and all other Aggrieved Employees (defined
3 below), hereby files this Complaint against Defendants NEWPORT FAB, LLC, a Delaware Limited
4 Liability Company; TOWER SEMICONDUCTOR NEWPORT BEACH, INC., a Delaware
5 Corporation; JAZZ SEMICONDUCTOR TRUSTED FOUNDRY, INC., a Delaware Corporation;
6 TOWER SEMICONDUCTOR USA, INC., a California Corporation; JAZZ SEMICONDUCTOR,
7 INC., an unknown entity; and DOES 1-100, inclusive, (collectively referred to herein as
8 "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges as follows:

9 **INTRODUCTION**

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

16 **JURISDICTION AND VENUE**

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

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

26 **THE PARTIES**

27 4. PLAINTIFF resides in the State of California. PLAINTIFF worked for
28 DEFENDANTS in the State of California as a non-exempt, hourly-paid employee during the

1 relevant period. PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
2 exempt employee from in or around July 2020 until the separation of PLAINTIFF's employment,
3 in or about July 2022. DEFENDANTS assigned PLAINTIFF to work out of DEFENDANTS'
4 facility located at 4321 Jamboree Rd, in Newport Beach, California.

5 5. PLAINTIFF worked for DEFENDANTS in several positions including but not
6 limited to the following positions and/or titles, Machine Operator, LG2 Operator, Operator Assistant
7 – Nights, Operator Assistant and/or other similar position(s)/title(s) from approximately July 2020
8 though in or around late November 2021/early December 2021, when PLAINTIFF went on leave.
9 PLAINTIFF worked for DEFENDANTS out of DEFENDANTS' facility located at 4321 Jamboree
10 Rd, in Newport Beach, California.

11 6. Defendant NEWPORT FAB, LLC is a Delaware Limited Liability Company that, at
12 all relevant times, was authorized to do business within the State of California and is doing business
13 in the State of California.

14 7. Defendant TOWER SEMICONDUCTOR NEWPORT BEACH, INC., is a Delaware
15 Corporation that, at all relevant times, was authorized to do business within the State of California
16 and is doing business in the State of California.

17 8. Defendant JAZZ SEMICONDUCTOR TRUSTED FOUNDRY, INC., is a Delaware
18 Corporation that, at all relevant times was authorized to do business within the State of California
19 and is doing business in the State of California.

20 9. Defendant TOWER SEMICONDUCTOR USA, INC., is a California Corporation
21 that, at all relevant times was authorized to do business within the State of California and is doing
22 business in the State of California.

23 10. Based on information and belief, defendant JAZZ SEMICONDUCTOR, INC., is an
24 unknown entity that, at all relevant times was authorized to do business within the State of California
25 and is doing business in the State of California.

26 11. DEFENDANTS own, operate, or otherwise manage manufacturing businesses that
27 specialize in manufacturing semiconductor devices, including but not limited to, semiconductor
28 wafers, and associated hardware, for customers in markets such as automotive, medical, industrial,

1 consumer and aerospace and defense, among others.

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

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

18 **JOINT LIABILITY**

19 14. Under California law, the definition of the terms “to employ” are broadly construed
20 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
21 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
22 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
23 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
24 was to reach situations in which multiple entities control different aspects of the employment
25 relationship. Supervision of the work, in the specific sense of exercising control over how services
26 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
27 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary
28 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

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

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

21 17. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
22 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
23 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
24 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
25 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
26 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
27 Employees. For example, DEFENDANTS issued wage statements to PLAINTIFF that identify
28 Defendant "Tower Semiconductor Newport Beach" as the legal name of the employer. Additionally,

1 some documents in PLAINTIFF's personnel file name "Tower Semiconductor" as the employer
2 and/or contain the "Tower Semiconductor" logo. Other documents related to PLAINTIFF's
3 employment by DEFENDANTS such as, PLAINTIFF's W2s, including but not limited to, for 2020,
4 identify Defendant NEWPORT FAB, LLC as the employer. Moreover, documents in PLAINTIFF's
5 personnel file, including but not limited to, DEFENDANTS' Labor Code Section 2810.5 Notice to
6 Employee, and DEFENDANTS' offer letter to PLAINTIFF, among other documents, all identify
7 Defendant NEWPORT FAB, LLC as the employer. Moreover, DEFENDANTS' Labor Code
8 section 2810.5 Notice to Employee, identifies "Jazz Semiconductor" as the "Other Names Hiring
9 Employer is 'doing business as.'"

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

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

20. 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 the other Aggrieved Employees.

PAGA ALLEGATIONS

21. PLAINTIFF brings this action under the PAGA, as a representative action on behalf of herself, 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 employed by the DEFENDANTS in California at any time from one year plus 65 days from filing of the initial Complaint through the present ("PAGA Period").

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

COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS

23. On August 23, 2022, PLAINTIFF BOLANOS, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency ("LWDA") informing it that DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged in this Complaint ("PAGA Notice"). The LWDA assigned PLAINTIFF the following case number: LWDA-CM-897184-22. On September 15, 2022, PLAINTIFF, through her counsel, gave written amended notice by online filing with the LWDA ("Amended PAGA Notice"), naming additional entities that employed PLAINTIFF. The PAGA Notice and Amended PAGA

1 Notice were sent to DEFENDANTS via certified mail.

2 24. The PAGA Notice and Amended PAGA Notice outlined PLAINTIFF's claims for
3 violations of the California Labor Code and the applicable wage orders on behalf of herself, the
4 State of California and other Aggrieved Employees.

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

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

13 **FACTUAL ALLEGATIONS**

14 27. During the relevant period, PLAINTIFF, and Aggrieved Employees worked for
15 DEFENDANTS in the State of California. At all times, DEFENDANTS exercised control over
16 PLAINTIFF and each of the Aggrieved Employees and suffered and/or permitted them to work.

17 28. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from in
18 or around July 2020 until the separation of PLAINTIFF's employment, in or about July 2022.
19 PLAINTIFF worked for DEFENDANTS in several positions including but not limited to the
20 following positions and/or titles, Machine Operator, LG2 Operator, Operator Assistant – Nights,
21 Operator Assistant and/or other similar position(s)/title(s) from approximately July 2020 though in
22 or around late November 2021/early December 2021, when PLAINTIFF went on leave.
23 PLAINTIFF worked for DEFENDANTS out of DEFENDANTS' facility located at 4321 Jamboree
24 Rd, in Newport Beach, California. PLAINTIFF worked for DEFENDANTS out of DEFENDANTS'
25 facility located at 4321 Jamboree Rd, in Newport Beach, California.

26 29. PLAINTIFF regularly worked at least twelve (12) hours per day, at least four (4)
27 days per week. DEFENDANTS compensated PLAINTIFF with an hourly rate for time counted by
28 DEFENDANTS as hours worked.

1 30. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
2 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
3 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
4 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
5 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
6 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
7 below.

8 31. Based on information and belief, Aggrieved Employees were not paid for all hours
9 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
10 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.
11 For example, prior to clocking in for her shift each day, PLAINTIFF and other Aggrieved
12 Employees were required to undergo a full-body temperature scan and then stand in line oftentimes
13 behind 10-30 employees to access the clock-in kiosk so they could then clock in for the start of their
14 shifts. However, this time spent under DEFENDANTS' control undergoing DEFENDANTS'
15 mandated Covid-temperature checks and wait time was not recorded and not compensated, resulting
16 in at least several minutes of pre-shift off-the-clock work each workday and unpaid minimum and
17 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

18 32. Additionally, PLAINTIFF and other Aggrieved Employees were required to perform
19 other off-the-clock work for which they were not compensated. For example, based on information
20 and belief, DEFENDANTS' electronic employee time-keeping system at times malfunctioned such
21 that Aggrieved Employees were frequently required to either reinitiate the system prior to being able
22 to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
23 meal periods, resulting in consistent off-the-clock work and the underpayment of minimum and
24 overtime wages owed to Aggrieved Employees. Based on information and belief, Aggrieved
25 Employees experienced the same issues when clocking out for shifts and/or back in for meal periods.
26 This time spent under DEFENDANTS' control was not recorded and not compensated and resulted
27 in unpaid minimum and overtime wages.

28 33. Based on further information and belief, DEFENDANTS did not compensate

1 Aggrieved Employees for time spent donning and doffing personal protective equipment, safety
2 equipment and/or uniforms (e.g., smocks/full-body hazmat suits, booties, safety goggles/glasses
3 and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after
4 completing a scheduled shift. For example, PLAINTIFF was oftentimes required to don a
5 smock/full-body hazmat suit, booties, safety goggles/glasses and/or face mask during her meal
6 periods, resulting in shortened meal periods, off-the-clock work, and the underpayment of minimum
7 and overtime wages owed to PLAINTIFF and other Aggrieved Employees.

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

13 35. Based on further information and belief, DEFENDANTS required/requires
14 PLAINTIFF and other Aggrieved Employees to undergo Covid testing outside of their scheduled
15 shift times without compensating them for the travel time to/from the testing sites, time spent
16 waiting for the tests to be performed and/or time spent undergoing testing/fulfilling
17 DEFENDANTS' testing requirements, resulting in significant off-the-clock work and unpaid
18 minimum and overtime wages.

19 36. Based on further information and belief, DEFENDANTS implemented a time-
20 rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved
21 Employees of compensable time because the time-rounding system implemented by
22 DEFENDANTS would almost always, if not always, result in understating actual compensable work
23 time.

24 37. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
25 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
26 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
27 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
28 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than

1 forty (40) hours in a week. For example, per DEFENDANTS' policy and practice, when
2 PLAINTIFF's official shift start time was 5:30 pm, PLAINTIFF was required to clock in by 5:24
3 pm or she would be considered late and face discipline. Based on information and belief,
4 DEFENDANTS would then round PLAINTIFF's start time to 5:30 pm. Similarly, at the end of her
5 shift, PLAINTIFF was prohibited from clocking out until 5:36am, however, DEFENDANTS would
6 then round PLAINTIFF's end time to her official end time of 5:30 pm. This systemic time shaving
7 resulted in at least twelve minutes of pre-shift and/or post-shift off-the-clock work each workday
8 and the significant underpayment of minimum and overtime wages owed to PLAINTIFF.

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

14 39. Based on information and belief, DEFENDANTS failed and continue to fail to pay
15 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
16 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
17 a work week, in violation of California's overtime laws.

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

23 41. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
24 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
25 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
26 (30) minute first (and second) meal periods. Based on information and belief, Aggrieved Employees
27 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
28 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their

1 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
2 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
3 completely. For example, PLAINTIFF estimates she was forced to take her single meal period late
4 (i.e. after the fifth hour of work) and/or it would be interrupted and/or cut short at least twice per
5 week, due to lack of relief workers, having to monitor and/or attend to her assigned machine, finish
6 scanning items, and/or complete other work tasks. Based on information and belief, other Aggrieved
7 Employees were from time to time interrupted by work assignments while clocked out for what
8 should have been off-duty meal periods.

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

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

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

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

27 46. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
28 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)

1 minute second meal period. For example, when PLAINTIFF worked more than ten hours in a shift,
2 PLAINTIFF was not provided with a second meal period.

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

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

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

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

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

28 52. PLAINTIFF and other Aggrieved Employees were not adequately informed,

1 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
2 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
3 the taking of duty-free rest periods.

4 53. Based on information and belief, DEFENDANTS did not have a have a compliant
5 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
6 practice. For example, PLAINTIFF was consistently required to work through her rest periods due
7 to lack of relief workers, having to monitor and/or attend to her assigned machine, finish scanning
8 items, and/or complete other work tasks.

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

13 55. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
14 lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer than ten
15 (10) hours, PLAINTIFF was not provided with any compliant third rest period.

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

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

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

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

9 60. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
10 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
11 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
12 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
13 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
14 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
15 other off-the-clock work policies and practices described above, including but not limited to,
16 whenever working a shift in which the employee earned a shift differential) which results in a
17 violation of Labor Code section 226(a).

18 61. As described herein, based on information and belief, DEFENDANTS also failed to
19 incorporate all forms of non-discretionary compensation earned during the pay period (including
20 but not limited to, shift differential pay and/or non-discretionary bonus/incentive pay and/or other
21 non-discretionary compensation) into the overtime pay rate calculation, and as such, failed to display
22 the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other Aggrieved
23 Employees.

24 62. Based on information and belief, wage statements issued by DEFENDANTS failed
25 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

26 63. For example, based on information and belief, DEFENDANTS issued wage
27 statements to PLAINTIFF that list a category for “Retro” without including the inclusive dates of
28 the accurate pay period for that “Retro” pay, further failing to list the total hours worked for the pay

1 period, including but not limited to, the total hours worked for the pay period the retroactive pay
2 corresponds with. As a result, the wage statements provided to PLAINTIFF and other Aggrieved
3 Employees were not accurate and do not include all of the statutorily required information, such as,
4 but not limited to, the inclusive dates of the period for which the employee is paid.

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

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

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

16 67. Upon separation of employment, Aggrieved Employees' final paychecks were not
17 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
18 Moreover, PLAINTIFF's and Aggrieved Employees' final paychecks, once provided, did not
19 include all wages owed as they were devoid of, including but not limited to, all owed minimum
20 wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off
21 wages at the properly accrued rates.

22 68. These violations subject DEFENDANTS to civil penalties under Labor Code section
23 203, 210, and/or 256.

24 69. **Unreimbursed Business Expenses.** Based on information and belief,
25 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
26 direct consequence of the performance of their job duties without providing reimbursement, in
27 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
28 Employees were improperly required to provide and maintain work tools that are supposed to be the

1 responsibility of the employer.

2 70. Based on information and belief, DEFENDANTS shifted the costs of doing business
3 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
4 to, uniforms and/or the use of Aggrieved Employees' personal mobile phone and data usage for
5 work related purposes including but not limited to receiving and responding to work related
6 messages and/or phone calls.

7 71. DEFENDANTS also failed to reimburse Aggrieved Employees for the cost of
8 purchasing their own work tools (e.g., flashlights and ballpoint pens). For example, PLAINTIFF
9 was required to purchase her own flashlight and/or other hand tools necessary to perform her job
10 duties. PLAINTIFF was not reimbursed for the cost of purchasing tools necessary to complete her
11 job duties. Based on information and belief, DEFENDANTS have a policy and/or practice of failing
12 to reimburse Aggrieved Employees for the cost of purchasing work tools.

13 72. Based on further information and belief, Aggrieved Employees incurred expenses
14 associated with being required to use their personal vehicles for work without receiving
15 reimbursement and/or full reimbursement from DEFENDANTS for the costs they incurred in
16 connection therewith. Based on information and belief, other Aggrieved Employees were/are
17 required to use their personal vehicles for work purposes without receiving any reimbursement from
18 DEFENDANTS and /or full reimbursement from DEFENDANTS, including but not limited to,
19 reimbursement at the applicable legally mandated Internal Revenue Service (IRS) per mile
20 compensation rate.

21 73. Based on information and belief, DEFENDANTS regularly failed to reimburse and
22 indemnify Aggrieved Employees for the above-described business expenses. Pursuant to California
23 Labor Code section 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed
24 for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out
25 the duties assigned by DEFENDANTS.

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

1 2802.

2 75. **Sick Leave Violations:** Throughout the relevant period, DEFENDANTS either
3 failed to provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
4 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (as a result
5 of DEFENDANTS' time rounding policy and practice, automatic deduction policies and practices
6 for meal periods, and/or other off-the-clock work described above) and by failing to incorporate
7 multiple rates of pay and/or failure to incorporate all forms of non-discretionary remuneration into
8 the sick pay calculation.

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

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

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

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

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

28 81. On information and belief, PLAINTIFF alleges that all of these practices were

1 experienced and continue to be experienced by other Aggrieved Employees.

2 82. **Failure to Provide Supplemental Paid Sick Leave.** Labor Code section 248.2
3 provides that all employers with 26 or more employees are required to provide up to 80 hours
4 for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for
5 themselves, to care for a family member or if it is vaccine-related. Based on information and
6 belief, DEFENDANTS violated Labor Code section 248.2 by not providing Aggrieved
7 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

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

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

22 85. Additionally, DEFENDANTS failed and continue to fail to keep accurate records
23 and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and
24 Aggrieved Employees.

25 86. **Failure to Produce Records.** Based on information and belief, DEFENDANTS fail
26 to timely produce or make available a current or former employee's personnel records and/or payroll
27 records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable
28 Wage Order. For example, PLAINTIFF sent a request for personnel records, time and pay records

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

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

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

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

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

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

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

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

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

6 93. DEFENDANTS' Aggrieved Employees worked in various positions, including but
7 not limited to, Machine Operator, LG2 Operator, Operator Assistant – Nights, Operator Assistant
8 and/or other similar position(s)/title(s). The nature of PLAINTIFF's and other Aggrieved
9 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
10 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
11 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
12 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
13 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
14 separate civil penalty.

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

20 95. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
21 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, seating,
22 and unreimbursed business expenses result in separate violations of sections 1198 and 1199.

23 96. **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 97. **Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
4 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
5 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
6 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
7 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

8 98. **Unlawful Agreements-Unlawful Criminal and Financial Background Checks.**
9 Based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved
10 Employees to agree in writing to unlawful conditions of employment, such as, but not limited to,
11 unlawful non-solicitation/non-compete agreements and unlawful criminal and/or financial checks
12 as a condition of obtaining and/or continuing employment, in violation of Labor Code section 432.5.
13 Based on further information and belief, DEFENDANTS also required PLAINTIFF and other
14 Aggrieved Employees to agree in writing to unlawful background checks not in conformity with the
15 requirements of Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq.
16 (“ICRAA”) and/or the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. (“FCRA”), in
17 violation of Labor Code section 432.5. Based on information and belief, DEFENDANTS asked
18 about arrests not resulting in convictions on its employment application, in violation of Labor Code
19 section 432.7 and or otherwise unlawfully asked about criminal history/unlawfully required the
20 disclosure of criminal history prior to extending a conditional offer of employment and required
21 PLAINTIFF and other Aggrieved Employees to agree in writing to the unlawful disclosures as a
22 condition of employment, in violation of Labor Code section 432.5.

23 **FIRST CAUSE OF ACTION**

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

25 **2698, ET SEQ.**

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

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

1 100. **Meal Period Violations.** California law requires employers to provide employees a
2 duty-free, uninterrupted, thirty-minute meal period when an employee works more than five (5)
3 hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab.
4 Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant*
5 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Upon information and belief, PLAINTIFF did not
6 sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

7 101. Employers must also provide employees with a second duty-free, uninterrupted
8 thirty-minute meal period when an employee works more than (10) hours in a workday, and it must
9 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
10 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
11 hours but no more than six (6) hours, the required meal period may be waived by mutual consent of
12 the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
13 hours but no more than twelve (12) hours, the required second meal period may be waived by mutual
14 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

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

23 103. Employers must pay employees an additional hour of wages at the employees'
24 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
25 meal period, first meal period provided after five (5) hours, second meal period provided after 10
26 hours). Lab. Code section 226.7; all applicable IWC Wage Orders, section 11(B) ("If an employer
27 fails to provide an employee a meal period in accordance with the applicable provision of this Order,
28 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of

1 compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th
2 1004.

3 104. DEFENDANTS have a consistent policy and/or practice of not providing lawful
4 meal periods to PLAINTIFF and Aggrieved Employees and/or providing compensation in lieu
5 thereof. As explained above, PLAINTIFF and other Aggrieved Employees were consistently unable
6 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
7 forced to take late meal periods, interrupted meal periods and/or work through part or all their
8 purported meal periods. Moreover, DEFENDANTS failed to keep accurate records of meal period
9 start and end times.

10 105. Based on information and belief, DEFENDANTS rounded the start and end times of
11 employees’ meal periods and/or automatically deducted thirty minutes per shift despite having
12 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did not
13 receive compliant meal periods.

14 106. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
15 periods in violation of California law or failed to pay the proper meal period premium for failure to
16 incorporate all non-discretionary remuneration including but not limited to, non-discretionary
17 bonuses/incentive pay and/or shift differential pay and/or other non-discretionary compensation into
18 the regular rate of compensation for purposes of calculating the owed meal period premium.

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

25 108. **Rest Period Violations.** Labor Code section 226.7 and all applicable IWC Wage
26 Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net
27 minutes for every four hours worked or major fraction thereof. Such rest periods must be in the
28 middle of the four-hour period "insofar as practicable." In *Brinker v Restaurant Corp. v. Superior*

1 *Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a
2 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for
3 shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10
4 hours up to 14 hours. (Id. at 1029). The rest period requirement obligates employers to permit and
5 authorize employees to take off-duty rest periods, meaning employers must relieve employees of all
6 duties and relinquish control over how employees spend their time. *Augustus v. ABM Security*
7 *Services, Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the
8 employer must pay the employee one hour of pay at the employee's regular rate of compensation
9 for each workday the employer did not provide at least one legally required rest period, pursuant to
10 Labor Code section 226.7, and all applicable IWC Wage Orders, section 12(B).

11 109. As explained above, DEFENDANTS did not properly authorize and provide
12 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
13 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
14 middle of the work period, as required by law. Any purported rest periods were consistently
15 interrupted, cut short, on duty, restricted to premises and/or late.

16 110. Moreover, based on information and belief, DEFENDANTS failed to pay
17 PLAINTIFF and other Aggrieved Employees an additional hour of pay at PLAINTIFF's and other
18 Aggrieved Employees' respective regular rates of compensation for each missed or improper rest
19 period. DEFENDANTS either failed to may any rest period premium at all or failed to pay the
20 proper rest period premium for failure to incorporate all non-discretionary remuneration including
21 but not limited to, non-discretionary bonuses/incentive pay and/or shift differential pay and/or other
22 non-discretionary compensation into the regular rate of compensation for purposes of calculating
23 the owed rest period premium.

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

27 112. **Unpaid Minimum and Overtime Wages.** California law provides that employees
28 in California must be paid for all hours worked, up to forty per week or eight (8) per day, at a regular

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

7 113. 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 section 510 and the applicable Wage Order section 3.
10 Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked
11 beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the
12 seventh consecutive day of work in a work week. Ibid.

13 114. PLAINTIFF and other Aggrieved Employees were non-exempt employees who
14 regularly worked time for which they were not compensated, resulting in unpaid minimum wages
15 as well as unpaid overtime wages for those Aggrieved Employees who worked more than forty (40)
16 hours per week or more than eight (8) hours in a workday or seven (7) consecutive days in a
17 workweek. Aggrieved Employees who worked more than twelve hours in a workday or more than
18 eight (8) hours on the seventh consecutive day of work in a workweek were also denied "double
19 time" wages due to, including but not limited to, DEFENDANTS' failure to relieve Aggrieved
20 Employees of all duties and employer control during any unpaid meal periods, rounded time entries
21 and payment of wages according to scheduled hours worked rather than actual time worked and
22 other policies and practices mandating off-the-clock work as described herein.

23 115. As explained above, DEFENDANTS failed to compensate PLAINTIFF and other
24 Aggrieved Employees for all hours worked by virtue of DEFENDANTS' automatic deductions and
25 time rounding policies, payment according to scheduled hours worked instead of actual time
26 worked, mandated pre-shift/post shift/ and/or other off-the-clock work policies and/or practices and
27 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
28 unlawful practices for missed or improper meal periods. This regular performance of off-the-clock

1 work resulted in the underpayment of minimum wages owed to Aggrieved Employees, the
2 underpayment of overtime wages for those Aggrieved Employees who worked more than eight (8)
3 hours per workday or more than forty per week, the underpayment of "double time" wages for those
4 Aggrieved Employees who worked more than twelve (12) hours per workday or more than eight (8)
5 hours on the seventh consecutive day of work, as well as record-keeping violations.

6 116. Based on information and belief, DEFENDANTS further violated California's
7 overtime wage laws by, including but not limited to, failing to incorporate all non-discretionary
8 compensation, including but not limited to, non-discretionary bonus compensation/incentive pay
9 and/or shift differential pay and/or other non-discretionary compensation into the regular pay rate
10 used to calculate the overtime rate of pay. Failing to include all non-discretionary compensation into
11 the regular pay rate used to calculate the owed overtime rate resulted in a miscalculation of the
12 overtime wage rate, resulting in the underpayment of overtime (and "double time") wages owed to
13 Aggrieved Employees.

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

24 118. DEFENDANTS knew or had reason to know Aggrieved Employees were working
25 during unpaid meal periods, prior to clocking in/after clocking out/ otherwise working off-the-clock
26 and not being paid for all hours worked. DEFENDANTS knowingly and intentionally failed to
27 provide PLAINTIFF and the Aggrieved Employees with accurate, itemized wage statements as the
28 wage statements provided by DEFENDANTS do not accurately reflect, inter alia, the correct total

1 hours worked. Due to, including but not limited to, DEFENDANTS' time-rounding and auto-
2 deduction policies and practices, payment according to scheduled hours rather than actual hours
3 worked, and other mandated off-the-clock work policies and practices described herein,
4 DEFENDANT'S wage statements fail to reflect the true total hours worked by PLAINTIFF and the
5 Aggrieved Employees worked, as required under Labor Code section 226(a). Failure to list all hours
6 worked on a wage statement, gives rise to an inference of injury under Labor Code section 226
7 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

8 119. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
9 statements to Aggrieved Employees that failed to list all applicable hourly rates in effect during the
10 pay period, due to, including but not limited to, failing to list an hourly rate/overtime rate at all
11 and/or failing to list the correct overtime rate because DEFENDANTS did not incorporate all non-
12 discretionary compensation, such as, but not limited to, non-discretionary bonuses/incentive pay
13 and/or shift differential pay and/or other non-discretionary compensation into the regular pay rate
14 for purposes of calculating the owed overtime rate.

15 120. DEFENDANTS' failure to accurately list, including but not limited to, all hours
16 worked on all wage statements caused confusion to PLAINTIFF and caused and continues to cause
17 confusion to other Aggrieved Employees over whether they received all wages owed to them.

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

21 122. Separately, and independent of the above allegation, based on information and belief,
22 DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees further violate
23 Labor Code section 226(a), by failing to list the correct name and address of the legal entity that is
24 the employer.

25 123. Separately, based on information and belief, DEFENDANTS failed to list the
26 inclusive dates of the pay period on wage statements issued to PLAINTIFF and other Aggrieved
27 Employees, in violation of Labor Code section 226(a).

28 124. These violations subject DEFENDANTS to civil penalties under Labor Code section

1 226. Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay
2 period during which the statute provisions were violated. ¹

3 125. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave
4 laws including, Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to
5 provide sick leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly
6 accrue paid sick leave due to DEFENDANTS' failure to account for actual hours worked (by
7 virtue of DEFENDANTS' meal period auto-deduction and time rounding practices and off-the-
8 clock work described herein), and/or failure to incorporate all forms of non-discretionary
9 remuneration into the sick pay calculation.

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

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

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

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

28

¹ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

1 leave, at the time it pays wages.

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

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

6 132. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA,
7 including but not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as
8 permitted by law.

9 133. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code section 248.2
10 provides that all employers with 26 or more employees are required to provide up to 80 hours
11 for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for
12 themselves, to care for a family member or if it is vaccine-related. Based on information and
13 belief, DEFENDANTS violated Labor Code section 248.2 by not providing Aggrieved
14 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

15 134. **Failure to Pay Vested Vacation/Paid Time Off:** California Labor Code section
16 227.3 provides that when an employer policy provides for paid vacations and/or paid time off,
17 and an employee is terminated without having taken off his, her, or their vested vacation time,
18 all vested vacation shall be paid to the employee as wages at the employee's final rate in
19 accordance with such contract of employment or employer policy respecting eligibility or time
20 served and that there shall be no forfeiture of vested vacation time or paid time off upon
21 termination. Based on information and belief, DEFENDANTS had and continue to have a
22 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
23 vacation/paid time off during their employment and/or failing to pay all vested, accrued paid
24 time off to Aggrieved Employees upon separation of employment, in violation of California
25 law, including but not limited to, Labor Code section 227.3.

26 135. **Record-Keeping Violations.** California Labor Code sections 226 and 1174
27 require DEFENDANTS to keep "accurate and complete" payroll records showing, among other
28 things, the hours worked daily by all non-exempt employees. Section 7 of all applicable IWC

1 Wage Orders similarly requires employer to keep time records showing, inter alia, when the
2 employees begin and end each work period and reflecting the true start and end times during
3 which all owed meal periods are provided each day. At all relevant times, DEFENDANTS have
4 failed, and continue to fail, to keep the required time records, as DEFENDANTS have failed to
5 record the true start and end times of PLAINTIFF's and other Aggrieved Employees' workdays
6 and failed to record PLAINTIFF's and other Aggrieved Employees' meal periods.
7 DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and
8 the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all
9 applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under
10 the Labor Code, including without limitation sections 1174.5 and 2699. Each violation of each
11 Labor Code section and Wage Order provision, for each aggrieved employee, results in a
12 separate civil penalty.

13 136. **Unreimbursed Business Expenses.** California law requires employers to
14 indemnify their employees for all necessary expenditures incurred by the employee in direct
15 consequence of the discharge of their duties or of their obedience to the directions of the
16 DEFENDANTS. See Cal. Lab. Code section 2802(a) and all applicable Wage Orders, section
17 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses'
18 shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the
19 employee enforcing the rights granted by this section." Cal. Lab. Code section 2802(c).
20 Moreover, "any contract or agreement, express or implied, made by any employee to waive the
21 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
22 employee or his personal representative of any right or remedy to which he is entitled to under
23 the laws of this State." See Cal. Lab. Code section 2804. Among other things, under California
24 law, when tools or equipment are required by the employer or are necessary to the performance
25 of a job, such tools and equipment shall be provided and maintained by employer, except that
26 an employee whose wages are at least two (2) times the minimum wage provided herein may
27 be required to provide and maintain hand tools and equipment customarily required by the trade
28 or craft. See applicable IWC Wage Order, section 9 (b). Among other things, under California

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

6 137. On information and belief, at all relevant times hereto, DEFENDANTS shifted
7 their costs of doing business onto Aggrieved Employees by requiring them to pay for its
8 business expenses, including but not limited to, uniforms and/or the use of Aggrieved
9 Employees' personal mobile phone and data usage for work related purposes including but not
10 limited to receiving and responding to work related messages and/or phone calls.

11 138. DEFENDANTS also failed to reimburse Aggrieved Employees for the cost of
12 purchasing their own work tools (e.g., flashlights and ballpoint pens). For example,
13 PLAINTIFF was required to purchase her own flashlight and/or other hand tools necessary to
14 perform her job duties. PLAINTIFF was not reimbursed for the cost of purchasing tools
15 necessary to complete her job duties. Based on information and belief, DEFENDANTS have a
16 policy and/or practice of failing to reimburse Aggrieved Employees for the cost of purchasing
17 work tools.

18 139. Based on further information and belief, Aggrieved Employees incurred
19 expenses associated with being required to use their personal vehicles for work without
20 receiving reimbursement and/or full reimbursement from DEFENDANTS for the costs they
21 incurred in connection therewith. Based on information and belief, other Aggrieved Employees
22 were/are required to use their personal vehicles for work purposes without receiving any
23 reimbursement from DEFENDANTS and /or full reimbursement from DEFENDANTS,
24 including but not limited to, reimbursement at the applicable legally mandated Internal Revenue
25 Service (IRS) per mile compensation rate.

26 140. DEFENDANTS' failure to provide Aggrieved Employees with full
27 reimbursement for all reasonable expenses associated with carrying out their duties required
28 that Aggrieved Employees subsidize and/or carry the burden of business expenses in violation

1 of Labor Code section 2802 and section 9 of all applicable IWC Wage orders. Accordingly,
2 this constitutes a PAGA violation based on violations of Labor Code section 2802 and section
3 9 of the applicable wage order.

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

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

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

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

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

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

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

27 146. DEFENDANTS' Aggrieved Employees worked in various positions, including but
28 not limited to, Machine Operator, LG2 Operator, Operator Assistant – Nights, Operator Assistant

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

8 147. **Standard Conditions of Labor Violations.** Together, Labor Code sections 1198
9 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
10 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
11 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
12 commission. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
13 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, seating,
14 and unreimbursed business expenses, result in separate violations of sections 1198 and 1199, which
15 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

16 148. **Refusal to Make Payment.** Labor Code section 216 declares unlawful an
17 employer's refusal to pay wages due and payable and/or DEFENDANTS' denial of the validity of
18 any claim to wages due. DEFENDANTS have violated this section by, inter-alia, failing to pay
19 PLAINTIFF and the Aggrieved Employees for all hours worked at the proper wage rate and by
20 failing to pay PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for
21 each meal or rest period not provided/that was invalid. These violations subject DEFENDANTS to
22 civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
23 each aggrieved employee, for each pay period during which the statute provisions were violated.

24 149. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
25 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
26 wages. As described above, DEFENDANTS willfully and systematically denied the Aggrieved
27 Employees minimum and overtime wage compensation for all hours worked which resulted in the
28 payment of less than statutorily required wages to tShem. DEFENDANTS acted with the intent to

1 deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages,
2 to which they were entitled to under California law.

3 **150. Untimely Payment of Final Wages.** DEFENDANTS failed to timely Aggrieved
4 Employees all wages that were due and owing upon termination or resignation. Labor Code sections
5 201 and 202, together require employers to pay all wages immediately upon discharge and/or within
6 72 hours of an employees' resignation. Upon separation of employment, Aggrieved Employees'
7 final paychecks were not timely provided. Based on information and belief, DEFENDANTS did not
8 pay final wages in accordance with the timing requirements set forth in Labor Code sections 201
9 and 202. Based on information and belief, DEFENDANTS provide final wages to Aggrieved
10 Employees on the regular pay day without regard to the timing requirements of Labor Code sections
11 201-202.

12 **151.** Moreover, upon separation of employment, Aggrieved Employees' final paychecks,
13 once provided, did not include all wages owed as they were devoid of, including but not limited to,
14 all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed paid time
15 off wages at the properly accrued rates. DEFENDANTS also willfully failed to timely pay all wages
16 upon separation of employment because it was not paying sick pay at the appropriate rates due to,
17 including but not limited to, failing to incorporate all non-discretionary compensation into the sick
18 pay calculation.

19 **152. Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5,**
20 **and 432.** Time and Pay Records: Labor Code section 226 and all applicable IWC Wage Orders,
21 section 7 require that employers keep the following information on file for each employee for a
22 minimum of three years: The employee's dates of employment; the employee's hourly rates and the
23 corresponding number of hours worked by the employee at each hourly rate, when the employee
24 begins and ends each work period (including meal periods) and split intervals; total hours worked
25 by the employee; all deductions; gross wages earned; and net wages earned.

26 **153.** Section (b) of Labor Code section 226 further requires employers to "afford current
27 and former employees the right to inspect or receive a copy of records pertaining to their
28 employment upon reasonable request to the employer." Section (c) of Labor Code section 226

1 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
2 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
3 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
4 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
5 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
6 the employer. Lab. Code section 226(f).

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

16 155. Based on information and belief, DEFENDANTS fail to produce or make available
17 Aggrieved Employees’ personnel records time and/or pay records when requested pursuant to Labor
18 Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
19 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

20 156. **Background Check Violations/Unlawful Agreements/Unlawful Inquiries into**
21 **Criminal History**. Labor Code section 432.5 provides that “no employer...shall require any
22 employee or applicant for employment to agree, in writing, to any term or condition which is known
23 by such employer...to be prohibited by law.” Based on information and belief, DEFENDANTS
24 required PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of
25 employment, such as, but not limited to, unlawful criminal and/or financial checks as a condition of
26 obtaining and/or continuing employment in violation of Labor Code section 432.5.

27 157. The California Labor Code places certain procedural and substantive limits on an
28 employer's ability to conduct employee background checks and on how employers can use the

1 information they obtain through these background checks. Upon information and belief,
2 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit or agree to submit
3 to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
4 employment in violation of Labor Code sections 1024.5, 432.7, and/or 432.5. Based on information
5 and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree in
6 writing to unlawful background checks not in conformance with the requirements of the
7 Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. ("ICRAA"), and
8 the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA"), and thus required
9 Aggrieved Employees to agree (in writing) to an unlawful background check as a condition of
10 employment, in violation of Labor Code section 432.5. Based on information and belief,
11 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to agree in writing to a
12 background check which failed to abide by the requirements set forth in CA Civil Code section
13 1786, et seq. and 15 U.S.C. section 1681, et seq., by including but not limited to, failing to provide
14 a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information
15 (including but not limited to, e.g., a liability release/waiver and/or information that is solely relevant
16 to applicants from different states), failing to provide a lawful purpose for the background check,
17 failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way
18 by which the individual could request a copy of the report, and failing to properly obtain
19 authorization or consent to such a background check, and thus was an unlawful background check.
20 Based on information and belief, DEFENDANTS also required PLAINTIFF and other Aggrieved
21 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
22 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
23 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
24 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

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

11 161. These violations subject DEFENDANTS to civil penalties under the Labor Code,
12 including without limitation Labor Code sections 432.5, 432.7 and 2699. Each violation of each
13 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
14 civil penalty.

15 162. Under the provisions of PAGA and the above-mentioned Labor Code sections,
16 including but not limited to, Labor Code sections 201, 202, 203, 210, 216, 221-223, 225.5, 226,
17 226.3, 226.7, 227.3, 245-248.5, 256, 432, 432.3, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1024.5,
18 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage
19 Orders as well as all interpretations of these laws by California Courts and administrative bodies, as
20 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
21 penalties:

- 22 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
23 relevant California Labor Code provisions listed herein only if permitted by the
24 PAGA statute, pursuant to Labor Code section 2699(a); and
- 25 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
26 violations without a civil penalty recoverable under the PAGA, all in the default
27 amounts provided by Labor Code section 2699(f).
- 28 c. The proper measure of penalties under PAGA is the number of violations,

1 whether those violations were committed as against Plaintiff or any Aggrieved
2 Employee, whether a party to this action or not.

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

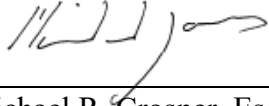
5 **PRAYER FOR RELIEF**

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

- 8 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
9 25% payable to Aggrieved Employees);
- 10 2. For reasonable attorney's fees and costs of suit; and
- 11 3. For such other and further relief that the Court deems just and proper.
- 12

13 Dated: October 28, 2022

CROSNER LEGAL, PC

14
15 By: 

16 Michael R. Crosner, Esq.
17 Zachary M. Crosner, Esq.
18 Jamie K. Serb, Esq.
19 Michael W. Jones, Esq.
20 Attorneys for Plaintiff,
21 VALERIA BOLANOS
22
23
24
25
26
27
28