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on behalf of the State of California and all Aggrieved Employees
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 TYRELL WILSON, on behalf of the State of
California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15
16 LUCKY MOTO CORPORATION, a
California Corporation; and DOES 1-100,
17 inclusive,

18 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

6/10/2025 11:09:00 AM

Clerk of the Superior Court
By C. Martinez ,Deputy Clerk

Case No.: 25CU030323C

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

1 Plaintiff, TYRELL WILSON, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants LUCKY
3 MOTO CORPORATION, a California Corporation; and DOES 1-100, inclusive. PLAINTIFF is
4 informed and believes and thereon alleges as follows:

5 **INTRODUCTION**

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

10 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS in San Diego County as a non-exempt, hourly-paid, employee with a job title of
27 cashier or a similar title/position, from in or around December 2024, through in or around the end
28 of February 2025.

6. Defendant, LUCKY MOTO CORPORATION, is a California Corporation, that at all relevant times was authorized to do business in California and is doing business in California.

7. DEFENDANTS own, operate, manage and/or staff its employees to work at the restaurants, stores, facilities and/or other locations in California, including but not limited to, in the following neighborhoods in San Diego, California: Pacific Beach, North Park, Point Loma, Seaport Village, Little Italy, and Mission Valley. DEFENDANTS operate business under including but not limited to, the following name(s): “Mr. Moto Pizza”. DEFENDANTS, through its various locations, serve including but not limited to, the restaurant industry.¹

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

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

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to

¹ See <https://mrmotopizza.com/locations/>. Last visited on June 9, 2025.

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

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

23 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
24 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
25 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
26 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
27 policies and practices regardless of the location(s) where they worked. Among other things,
28 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,

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

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

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

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

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

PAGA ALLEGATIONS

17. PLAINTIFF brings this action under the PAGA, as a representative action on behalf of the State of California and all Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include the following:

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

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

COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS

19. PLAINTIFF, on April 1, 2025, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that

1 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
2 in this Complaint ("PAGA Notice"). The PAGA Notice was also sent to DEFENDANTS via
3 certified mail.

4 20. The PAGA Notice outlined PLAINTIFF's claims for violations of the California
5 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
6 Employees.

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

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

15 **FACTUAL ALLEGATIONS**

16 23. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees,
17 worked for DEFENDANTS in the State of California. At all times referenced herein,
18 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees and suffered and/or
19 permitted them to work.

20 24. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
21 DEFENDANTS as a non-exempt employee with a job title of cashier and/or a similar job
22 title/position, from in or around December 2024, through in or around the end of February 2025.

23 25. PLAINTIFF regularly worked at least approximately five (5) to nine (9) hours per
24 shift, at least two (2) to five (5) days per week.

25 26. DEFENDANTS assigned PLAINTIFF to work at one of its restaurant/locations in
26 San Diego, California.

27 27. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
28 DEFENDANTS as hours worked.

1 28. At times, DEFENDANTS compensated PLAINTIFF with a base hourly rate of
2 \$17.25. PLAINTIFF also earned tips.

3 29. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
4 worked shifts of more than five (5) hours, entitling them to at least one meal period.

5 30. At times, PLAINTIFF and other Aggrieved Employees would not receive legally
6 compliant thirty (30) minute first meal breaks.

7 31. At times, PLAINTIFF and other Aggrieved Employees were forced to work through
8 their meal periods, take interrupted, late, shortened meal periods, were restricted to their worksite
9 and/or otherwise required to remain on-duty during unpaid meal periods due to including but not
10 limited to, the need to complete assigned job duties.

11 32. For example, PLAINTIFF was typically forced to complete work tasks during
12 PLAINTIFF's meal periods due to lack of relief workers, understaffing and/or the need to complete
13 assigned job duties.

14 33. Also, at times, PLAINTIFF was required to take late meal periods due to lack of
15 relief workers, understaffing and/or the need to continue completing assigned job duties.

16 34. Based on information and belief, DEFENDANTS would unlawfully edit the clock in
17 and out times for PLAINTIFF's and other Aggrieved Employees' meal periods in order to display
18 at least a thirty minute off-duty meal period during many if not all shifts worked, notwithstanding
19 the fact that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had
20 required PLAINTIFF and other Aggrieved Employees' to complete work-related tasks during their
21 meal periods.

22 35. Also, based on information and belief, at times, DEFENDANTS required Aggrieved
23 Employees to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS
24 failed to take into account when scheduling meal periods for Aggrieved Employees. Based on
25 information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock
26 work.

27 36. At times, DEFENDANTS implemented policies and/or practices that failed to relieve
28 Aggrieved Employees of all duties and DEFENDANTS' control during unpaid meal periods.

1 37. Based on information and belief, DEFENDANTS had actual and/or constructive
2 knowledge that their policies and practices resulted in the denial of uninterrupted meal periods
3 which were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees,
4 in violation of California's meal period laws.

5 38. Based on information and belief, despite DEFENDANTS' failure to provide lawful
6 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
7 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
8 deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods
9 (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or
10 constructive knowledge that PLAINTIFF and other Aggrieved Employees did not receive lawful
11 meal periods.

12 39. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
13 additional hour of wages at their respective regular rates of compensation for each workday a lawful
14 meal period was not provided.

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

19 41. For example, Aggrieved Employees' rest periods were interrupted, cut short, on duty,
20 restricted to premises and/or late due to understaffing, the nature and constraints of their job duties,
21 and/or due to commentary from supervisors/ managers pressuring Aggrieved Employees to skip rest
22 breaks completely or otherwise take non-compliant rest periods.

23 42. For example, PLAINTIFF was usually required to work during PLAINTIFF's rest
24 periods due to the need to complete assigned job duties. PLAINTIFF was pressured to complete
25 PLAINTIFF's work duties according to a designated schedule/according to how busy the location
26 was such that rest breaks were only taken once tasks were completed, and/or as time permitted.

27 43. DEFENDANTS implemented policies and/or practices that failed to relieve
28 PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS' control during rest

1 periods.

2 44. Furthermore, DEFENDANTS failed to pay a rest period premium at Aggrieved
3 Employees' respective regular rates of pay for each day in which they experienced a
4 missed/unlawful rest period in violation of California law.

5 45. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
6 PLAINTIFF and other Aggrieved Employees for all hours worked, resulting in the underpayment
7 of minimum and overtime wages.

8 46. Aggrieved Employees were not paid for all hours worked due to DEFENDANTS'
9 mandated off-the clock work policies and/or practices.

10 47. For example, at times, DEFENDANTS required, suffered and/or permitted
11 Aggrieved Employees to complete off-the-clock work tasks prior to clocking in for the start of their
12 shifts, after clocking out for the end of their shifts and/or during unpaid meal periods, resulting in
13 DEFENDANTS' failure to compensate Aggrieved Employees for all hours worked and the
14 underpayment of wages owed to those Aggrieved Employees.

15 48. For example, as explained herein, PLAINTIFF was often required to complete work
16 tasks during unpaid meal periods resulting in DEFENDANTS' failure to compensate PLAINTIFF
17 for all hours worked and the underpayment of minimum wages owed.

18 49. Also, when PLAINTIFF was required to open PLAINTIFF's work location,
19 PLAINTIFF was required to first unlock the doors, turn on all the lights in the restaurant/facility,
20 deactivate the alarm and/or complete other work tasks before clocking in for work, resulting in pre-
21 shift off-the-clock work and the underpayment of wages owed to PLAINTIFF.

22 50. When PLAINTIFF closed PLAINTIFF's work location, PLAINTIFF was required
23 to first clock out for the end of PLAINTIFF's shift before enabling the alarm, turning off all the
24 lights in the facility, locking the doors and/or completing other related work tasks off the clock.
25 This resulted in additional off-the-clock post-shift work that was not compensated and the
26 underpayment of wages owed to PLAINTIFF.

27 51. At times, PLAINTIFF was required to complete work tasks before clocking in for
28 work and/or after clocking out of work as DEFENDANTS did not want PLAINTIFF to continue

1 working overtime hours. As such, PLAINTIFF was at times forced to complete PLAINTIFF's work
2 tasks off-the-clock in order to avoid and/or reduce the number of overtime hours worked.
3 DEFENDANTS knew that the assigned workload would require PLAINTIFF to work well over
4 eight hours in a shift and knew when PLAINTIFF worked off-the-clock in order to complete
5 assigned work tasks yet failed to pay PLAINTIFF for all hours worked.

6 52. Based on information and belief, DEFENDANTS engaged in systemic time record
7 manipulation to shave time worked off PLAINTIFF and other Aggrieved Employees' workdays,
8 by, for example, editing electronic time records to delete portions of total hours worked or otherwise
9 understate actual hours worked by PLAINTIFF and other Aggrieved Employees.

10 53. Based on information and belief, at times, Aggrieved Employees were required to
11 complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
12 messages they received to their phones/mobile devices and were required to respond to, including
13 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
14 resulting in the underpayment of wages owed to Aggrieved Employees.

15 54. Based on information and belief, at times, DEFENDANTS failed to pay Aggrieved
16 Employees all owed reporting time pay wages and/or failed to pay split shift compensation
17 whenever their work schedules were interrupted by non-paid non-working periods established by
18 DEFENDANTS, which resulted in a violation of the applicable Wage Order and DEFENDANTS'
19 failure to pay all owed minimum wages to Aggrieved Employees.

20 55. Based on further information and belief, at times, DEFENDANTS implemented a
21 time-rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved
22 Employees of compensable time because the time-rounding system implemented by
23 DEFENDANTS would almost always, if not always, result in understating actual compensable work
24 time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices
25 resulted in the underpayment of minimum wages owed to PLAINTIFF and Aggrieved Employees
26 as well as unpaid overtime wages for those Aggrieved Employees who worked more than eight (8)
27 hours in a day and/or more than forty (40) hours in a week.

28 56. DEFENDANTS' failure to pay for all time worked by virtue of their time rounding,

1 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
2 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
3 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
4 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
5 forty (40) hours in a week.

6 57. DEFENDANTS failed and continue to fail to pay the lawful premium wage rate for
7 all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

8 58. Based on information and belief, DEFENDANTS had actual and/or constructive
9 knowledge that its off-the-clock work resulted in the underpayment of minimum wages and
10 overtime wages owed to Aggrieved Employees, in violation of California's minimum and overtime
11 wage laws.

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

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

25 61. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
26 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
27 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
28 Aggrieved Employees (by virtue of off-the-clock work policies and practices) which results in a

1 violation of Labor Code section 226(a).

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

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

9 64. **Failure to Timely Pay All Wages Upon Separation of Employment.**
10 DEFENDANTS failed to timely pay Aggrieved Employees all wages that were due and owing upon
11 discharge of employment. DEFENDANTS untimely provide final wages to Aggrieved Employees
12 without regard to the timing requirements of Labor Code sections 201-202.

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

17 66. For example, upon separation of employment, DEFENDANTS failed to timely
18 furnish PLAINTIFF with a final paycheck containing all owed minimum wages, overtime wages,
19 premium wages, vacation pay and/or paid time off wages at the properly accrued rates.

20 67. Thus, PLAINTIFF is entitled to penalties under Labor Code section 203.

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

23 69. **Unreimbursed Business Expenses.** DEFENDANTS required PLAINTIFF and
24 Aggrieved Employees to incur business expenses as a direct consequence of the performance of
25 their job duties without providing reimbursement, in violation of Labor Code section 2802.

26 70. DEFENDANTS shifted the costs of doing business onto Aggrieved Employees by
27 requiring them to pay for their business expenses, including but not limited to, uniforms/work
28 clothing/work shoes/personal protective/safety gear and/or the use of Aggrieved Employees'

1 personal cell phones for work-related purposes.

2 71. For example, DEFENDANTS required PLAINTIFF to respond to work-related calls
3 and/or messages on PLAINTIFF's personal cell phone/device(s) without reimbursing PLAINTIFF
4 for the business expenses PLAINTIFF incurred in connection with being required to use
5 PLAINTIFF's personal device to carry out PLAINTIFF's assigned job duties.

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

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

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

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

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

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

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

28 79. For example, DEFENDANTS failed to provide PLAINTIFF with suitable seating,

1 and when PLAINTIFF was not engaged in duties which required PLAINTIFF to stand, no seating
2 was placed in reasonable proximity to PLAINTIFF's workstation.

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

8 81. DEFENDANTS' Aggrieved Employees worked in various positions, including but
9 not limited to, as cashiers. The nature of Aggrieved Employees' work reasonably permitted the use
10 of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to
11 Aggrieved Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders,
12 and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor
13 Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order
14 provision, for each Aggrieved Employee, results in a separate civil penalty.

15 82. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
16 engaged in these same herein described unlawful practices, which led to violations of the California
17 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
18 unlawful practices to all of its employees that it applied to PLAINTIFF.

19 **FIRST CAUSE OF ACTION**
20 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
21 **2698, *ET SEQ.***
22 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
23 **Defendants)**

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

25 **Meal Period Violations**

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

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

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

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

19 88. As explained above, PLAINTIFF and other Aggrieved Employees were unable to
20 take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to work during
21 their meal periods due to the nature and constraints of their job duties, and/or commentary from
22 supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

23 89. Also, DEFENDANTS implemented policies and practices that failed to relieve
24 Aggrieved Employees of all duties and DEFENDANTS’ control during meal periods, in violation
25 of California meal period law.

26 90. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
27 actual and/or constructive knowledge that their unlawful policies and practices resulted in the denial
28 of compliant meal periods in violation of California's meal period laws.

1 91. DEFENDANTS also failed to pay all owed premiums for missed/otherwise unlawful
2 meal periods in violation of California law and/or failed to pay the proper meal period premium for
3 failure to incorporate all non-discretionary remuneration into the regular rate or compensation for
4 purposes of calculating the owed meal period premium.

5 92. These unlawful meal period policies and practices result in violations of Labor Code
6 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
7 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
8 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
9 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

10 **Rest Period Violations**

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

25 94. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
26 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
27 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
28 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from

1 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
2 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
3 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
4 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
5 “onus is on the employer to clearly communicate the authorization and permission [to take rest
6 periods] to its employees.”).

7 95. PLAINTIFF and the Aggrieved Employees were not allowed to take legally
8 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.
9 As explained above, rest periods were interrupted, cut short, on duty, and/or otherwise subject to
10 DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
11 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
12 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

17 97. As a result, PLAINTIFF and Aggrieved Employees did not receive legally compliant
18 first meal periods as required by California law.

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

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

1 **Minimum and Overtime Wage Violations**

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

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

15 102. As explained above, DEFENDANTS violated California's minimum and overtime
16 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
17 by virtue of, among other things, DEFENDANTS' off-the-clock work policies and practices,
18 automatic deductions for meal periods and/or rounding practices described above which resulted in
19 unpaid minimum and overtime wages.

20 103. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
21 Aggrieved Employees for all hours worked.

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

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

28 106. Based on information and belief, DEFENDANTS further violated California's
19
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
2 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
3 compensation into the regular rate of pay used to calculate the overtime rate of pay, resulting in the
4 underpayment of overtime wages owed.

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

9 **Untimely Payment of Final Wages**

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

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

23 110. As explained herein, DEFENDANTS failed and continue to fail to timely pay final
24 wages to PLAINTIFF and Aggrieved Employees upon discharge/separation of employment in
25 violation of Labor Code section 201-202. Also, final paychecks did not include all wages owed as
26 they are devoid of, including but not limited to, all owed minimum wages, overtime wages, premium
27 wages, and/or paid time off wages at the properly accrued rates.

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

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

3 **Business Expense Violations**

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

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

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

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

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

26 117. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
27 Employees have suffered injury in that they were not completely reimbursed as mandated by
28 California law.

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

5 119. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
6 Employees have suffered injury in that they were not completely reimbursed as mandated by
7 California law.

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

12 **Wage Statement Violations**

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

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

1 the employee, in violation of Labor Code section 226(a)(9).

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

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

16 125. Also, wage statements issued by DEFENDANTS failed to list all applicable hourly
17 rates in effect during the pay period and the corresponding number of hours worked at each hourly
18 rate by the employee, in violation of, including but not limited to, Labor Code section 226(a)(9).

19 126. DEFENDANTS' failure to accurately list all hours worked on all wage statements
20 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
21 Employees over whether they received all wages owed to them.

22 127. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
23 they could not easily determine whether they received all wages owed to them and whether they
24 were paid for all hours worked.

25 128. DEFENDANTS further violated Labor Code section 226(a), by among other things,
26 failing to list the correct name and/or address of the legal entity that is the employer on wage
27 statements issued to Aggrieved Employees.

28 129. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and

1 Aggrieved Employees with accurate, itemized wage statements.

2 130. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
3 Employees have suffered injury. The absence of accurate information on their wage statements has
4 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
5 mathematical computations to determine the amount of wages owed, and will cause difficulty and
6 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
7 submission of inaccurate information about wages and amounts deducted from wages to state and
8 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
9 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
10 and pay records than if DEFENDANT had complied with its legal obligations.

11 131. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
12 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
13 during which the statute provisions were violated. ²

14 **Seating Violations**

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

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

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

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

25 136. Suitable seating is one of the worker protections covered by California's Wage
26 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
27 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*

28 ² Labor Code § 226.3 (establishing that the civil penalty is ~~24~~ per employee per violation").

1 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

5 138. For example, DEFENDANTS failed to provide PLAINTIFF with suitable seating,
6 and when PLAINTIFF was not engaged in duties which required PLAINTIFF to stand, no seating
7 was placed in reasonable proximity to PLAINTIFF's workstation.

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

13 140. DEFENDANTS' Aggrieved Employees worked in various positions, including but
14 not limited to, as cashiers. The nature of Aggrieved Employees' work reasonably permitted the use
15 of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to
16 Aggrieved Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders,
17 and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor
18 Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order
19 provision, for each Aggrieved Employee, results in a separate civil penalty.

20 141. Under the provisions of PAGA and the above mentioned Labor Code sections,
21 including but not limited to Labor Code sections 201-203, 226, 226.7, 256, 432, 510, 512, 558,
22 558.1, 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, and all applicable Wage Orders as well
23 as all interpretations of these laws by California Courts and administrative bodies, as well as any
24 other law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

28 b. Default PAGA penalties for any violation of the enumerated list of Labor Code

1 violations without a civil penalty recoverable under the PAGA, all in the default amounts provided
2 by Labor Code section 2699(f).

3 142. 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.

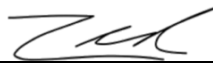
5 **PRAYER FOR RELIEF**

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

- 8 1. For civil penalties under Labor Code Section 2699;
9 2. For an order temporarily, preliminarily and permanently enjoining and
10 restraining DEFENDANTS from engaging in similar unlawful conduct as set
11 forth herein;
12 3. For reasonable attorney's fees and costs of suit; and
13 4. For such other and further relief that the Court deems just and proper.

14 Dated: June 10, 2025

CROSNER LEGAL, PC

15
16 By: 
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