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Attorneys for Plaintiff MARIA DIAZ
As an individual on behalf of herself and
on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

MARIA DIAZ, as an individual on behalf
of herself and on behalf of all others
similarly situated,

Plaintiff,

v.

CENTRAL VALLEY EGGS, LLC, a
Delaware Limited Liability Company; and
DOES 1-100, inclusive,

Defendants.

Case No.: BCV-22-102510

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

- 1. Recovery of Unpaid Minimum Wages and Liquidated Damages**
- 2. Recovery of Unpaid Overtime Wages**
- 3. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 4. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 5. Failure to Furnish Accurate Itemized Wage Statements**
- 6. Failure to Timely Pay All Wages Due Upon Separation of Employment**
- 7. Failure to Reimburse Business Expenses**
- 8. Unfair Competition and**
- 9. Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff, MARIA DIAZ (“PLAINTIFF”), an individual on behalf of herself, and all other
2 similarly situated Class Members (as defined below), and Aggrieved Employees (defined below)
3 hereby files this Complaint against Defendants CENTRAL VALLEY EGGS, LLC, a Delaware
4 Limited Liability Company; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Kern pursuant to California Code of Civil Procedure section 395.5 because
9 DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
12 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
13 where the defendants committed Labor Code violations against some of its employees).

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
17 in the State of California as a non-exempt employee from in or around late 2017 through in or around
18 December 2021 when PLAINTIFF was terminated.

19 3. PLAINTIFF regularly worked for DEFENDANTS as a maintenance worker at
20 DEFENDANTS’ facility in Wasco, California in Kern County. At times, PLAINTIFF also worked
21 in different positions including but not limited to as a packer and/or similar title.

22 4. Defendant CENTRAL VALLEY EGGS, LLC is a Delaware limited liability
23 company that, at all relevant times, was authorized to do business within the State of California and
24 is doing business in the State of California.

25 5. DEFENDANTS own, operate, or otherwise manage a cage-free egg production
26 facility in Wasco, California. DEFENDANTS produce, grade, package and sell cage-free eggs to
27 retailers and food service companies in California.¹

28 ¹ <https://www.cveggs.com/about>. Last visited on September 26, 2022.

6. 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.

7. 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

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

1 California, applying a less stringent standard to what constitutes sufficient control by a business
2 over its vendor's employees' wages and working conditions to render that business liable as a joint
3 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); "[i]f the putative
4 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
5 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
6 employment," *Id.* at 875 [emphasis added].

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

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

28 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF, Class Members and
2 Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of action,
3 in that DEFENDANTS, exercised sufficient control over PLAINTIFF, Class Members and
4 Aggrieved Employees' wages, hours and working conditions, and/or suffered or permitted
5 PLAINTIFF, Class Members and Aggrieved Employees to work so as to be considered the joint
6 employers of PLAINTIFF, Class Members and Aggrieved Employees.

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

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

28 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
5
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 control over, applied the same policies and practices, and engaged in the same acts and omissions
2 with regard to the other Class Members and Aggrieved Employees.

3 **CLASS ALLEGATIONS**

4 15. PLAINTIFF brings this action on behalf of herself, and all others similarly situated
5 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
6 represent are defined as follows and referred to as the “Class” or “Class Members”:

7 All current and former non-exempt employees that worked either
8 directly or via a staffing agency for DEFENDANTS at any location
9 in California at any time within the four years and 178 days prior to
10 the filing of the initial Complaint (“Class Period”).²

- 11 a. Numerosity. While the exact number of Class Members is unknown to
12 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
13 all members is impractical under the circumstances of this case. PLAINTIFF is
14 informed and believes the Class consists of at least 100 individuals.
- 15 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
16 because common questions of law and fact predominate over individual issues.
17 Common questions include, but are not limited to, the following: (1) whether
18 DEFENDANTS understated hours worked and failed to pay all amounts due to
19 PLAINTIFF and the Class Members for wages earned, including minimum and
20 overtime wages, under California law; (2) whether DEFENDANTS provided
21 PLAINTIFF and the Class Members with all meal periods or premium payments
22 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
23 provided PLAINTIFF and the Class Members with all rest periods or premium
24 payments in lieu thereof, in compliance with California law; (4) whether
25 DEFENDANTS provided PLAINTIFF and Class Members with accurate,

26
27 ² In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a)
28 (California Rules of Court), whereby “statutes of limitations and repose for civil causes of action that
exceed 180 days are tolled from April 6, 2020 to October 1, 2020.”

1 itemized wage statements in compliance with California law, displaying,
2 including but not limited to, the total hours worked during the pay period; (5)
3 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
4 wages due upon separation of employment; (6) whether DEFENDANTS failed
5 to reimburse PLAINTIFF and the Class Members for all business expenses; and
6 (7) whether DEFENDANTS violated California Business and Professions Code
7 sections 17200, *et seq.*

8 c. Ascertainable Class. The proposed Class is ascertainable as members can be
9 identified and located using information in DEFENDANTS' business, payroll
10 and personnel records.

11 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
12 PLAINTIFF suffered a similar injury as members of the Class as a result of
13 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
14 and pay all owed minimum and overtime wages, failure to provide proper meal
15 periods and rest periods or premium compensation in lieu thereof, failure to
16 provide accurate wage statements, failure to reimburse business expenses, and
17 failure to timely pay all wages due upon separation of employment.

18 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
19 Class Members. PLAINTIFF has no interests adverse to the interests of the other
20 Class Members. Counsel who represent PLAINTIFF are competent and
21 experienced in litigating similar class action cases and are California lawyers in
22 good standing. Counsel for PLAINTIFF have the experience and resources to
23 vigorously prosecute this case.

24 f. Superiority. A class action is superior to other available means for the fair and
25 efficient adjudication of this controversy since individual joinder of all members
26 of the class is impractical. Class action treatment will permit a large number of
27 similarly situated persons to prosecute their common claims in a single forum
28 simultaneously, efficiently, and without the unnecessary duplication of effort

1 and expense that numerous individual actions would engender. Furthermore, as
2 the damages suffered by each individual member of the Class may be relatively
3 small, the expenses and burden of individual litigation would make it difficult
4 or impossible for individual members of the Class to redress the wrongs done to
5 them, while an important public interest will be served by addressing the matter
6 as a class action. The cost to the court system of adjudication of such
7 individualized litigation would be substantial. Individualized litigation would
8 also present the potential for inconsistent or contradictory judgments. Finally,
9 the alternative of filing a claim with the California Labor Commissioner is not
10 superior, given the lack of discovery in such proceedings, the fact that there are
11 fewer available remedies, and the losing party has the right to a trial de novo in
12 the Superior Court.

13 **FACTUAL AND LEGAL ALLEGATIONS**

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

18 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
19 PLAINTIFF worked for DEFENDANTS as a maintenance worker at DEFENDANTS' facility in
20 Wasco, California from in or around late 2017 through in or around December 2021. PLAINTIFF
21 regularly worked at least eight (8) hours to eleven (11) hours per day, at least five (5) days per week.

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

24 19. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
25 PLAINTIFF, Class Members and Aggrieved Employees for all hours worked, resulting in the
26 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate
27 PLAINTIFF, Class Members and Aggrieved Employees for all hours worked by virtue of,
28 DEFENDANTS' automatic deduction and time rounding policies, and failure to relieve employees

1 of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed
2 or improper meal periods, as explained below.

3 20. Based on information and belief, DEFENDANTS implemented a policy and/or
4 practice of rounding meal period start and end times and/or automatically deducting at least thirty
5 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
6 PLAINTIFF, Class Members and Aggrieved Employees were subject to DEFENDANTS' control
7 during purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
8 PLAINTIFF, Class Members and Aggrieved Employees of all wages owed.

9 21. Based on information and belief, Class Members and Aggrieved Employees were
10 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to
11 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
12 and/or practices. For example, prior to beginning a shift, DEFENDANTS required PLAINTIFF,
13 Class Members and Aggrieved Employees to park their vehicles outside of DEFENDANTS'
14 premises, then wait in a line to cross DEFENDANTS' gate and disinfect their shoes before clocking
15 into work and boarding a company bus that would transport Class Members and Aggrieved
16 Employees from the gate to the entrance of DEFENDANTS' facility. This wait time lasted at least
17 one to two minutes as there were usually at least 10-12 employees in line waiting to cross the gate
18 and disinfect their shoes prior to clocking in and boarding the bus. PLAINTIFF, Class Members and
19 Aggrieved Employees were not paid for this time resulting in unpaid minimum and overtime wages.

20 22. Based on information and belief, DEFENDANTS failed to pay Class Members and
21 Aggrieved Employees for time they were required to spend completing orientation, policy
22 questionnaires, and/or time spent completing the onboarding process including but not limited to
23 reviewing various documents and policies provided by DEFEDANTS. Based on information and
24 belief, this work time was completed off-the-clock and was not compensated.

25 23. Based on further information and belief, DEFENDANTS implemented a time-
26 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
27 Aggrieved Employees of compensable time because the time-rounding system implemented by
28 DEFENDANTS would almost always, if not always, result in understating actual compensable work

1 time.

2 24. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
3 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
4 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
5 minimum wages owed to PLAINTIFF, Class Members and Aggrieved Employees as well as unpaid
6 overtime wages for those Class Members and Aggrieved Employees who worked more than eight
7 (8) hours in a day and/or more than forty (40) hours in a week.

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

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

17 27. Based on information and belief, DEFENDANTS failed to incorporate all non-
18 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
19 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
20 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF, Class
21 Members and Aggrieved Employees. For example, PLAINTIFF earned non-discretionary bonuses,
22 including but not limited to attendance bonuses which, based on information and belief, were not
23 incorporated into the regular rate of pay for purposes of calculating the owed overtime rate.

24 28. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
25 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
26 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
27 Employees would not receive legally compliant thirty (30) minute first (and second) meal periods.
28 Based on information and belief, Class Members and Aggrieved Employees were consistently

1 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
2 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
3 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
4 pressuring them to take non-compliant meal periods or skip meal periods completely. For example,
5 based on information and belief, at times, PLAINTIFF was required to delay her meal periods past
6 the fifth hour of work in order to have her work/cleaning area inspected.

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

12 30. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
14 DEFENDANTS' control during unpaid meal periods. For example, PLAINTIFF and other Class
15 Members and Aggrieved Employees were required to remain on DEFENDANTS' premises during
16 purported meal periods and/or were required to cut their meal periods short. At the beginning of
17 each shift, DEFENDANTS require Class Members and Aggrieved Employees to park their vehicle
18 outside of DEFENDANTS' premises. A company provided bus then picks up all Class Members
19 and Aggrieved Employees and drives them to the entrance of DEFENDANTS' facility. During meal
20 periods, in order to leave DEFENDANTS' premises, PLAINTIFF and other Class Members and
21 Aggrieved Employees must call the company-provided bus, wait for the bus to pick them up at the
22 entrance of the facility and then drive them to their vehicle and/or to the premises' gate where they
23 can exit the premises. This process takes at least 2-4 minutes to complete. In order to return to the
24 facility, PLAINTIFF and other Class Members and Aggrieved Employees would need to repeat this
25 process, (call the company-provided bus, wait for the bus, and ride in the company-provided bus to
26 the entrance of the facility) before the end of the 30-minute meal period. This process took at least
27 a few additional minutes to complete.

28 31. Because DEFENDANTS did not provide additional time for Class Members and
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Aggrieved Employees to leave and enter DEFENDANTS' premises on the company-provided bus,
2 PLAINTIFF and other Class Members and Aggrieved Employees would receive less than 30
3 minutes of break time for their meal period if they left DEFENDANTS' premises. Accordingly,
4 PLAINTIFF, Class Members and Aggrieved Employees had to remain on DEFENDANTS'
5 premises for their meal periods in order to get the full 30 minutes of break time to which they are
6 entitled to under California law. As such, whenever PLAINTIFF, Class Members and Aggrieved
7 Employees left DEFENDANTS' premises for their meal periods, DEFENDANTS violated
8 California law by not providing them with a full 30-minute meal period. DEFENDANTS also
9 violated California law on those shifts when PLAINTIFF and Class Members and Aggrieved
10 Employees remained on premises in order to get their full 30 minutes of break time because they
11 were then restricted to DEFENDANTS' premises in violation of California law.

12 32. Based on information and belief, DEFENDANTS required Class Members and
13 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time (as
14 described above) which DEFENDANTS failed to take into account when scheduling meal periods
15 for Class Members and Aggrieved Employees. Based on information and belief, meal periods were
16 late, in part due to unaccounted pre-shift off-the-clock work.

17 33. Based on information and belief, despite DEFENDANTS' failure to provide lawful
18 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
19 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
20 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
21 periods (including but not limited to short meal periods and/or meal periods restricted to
22 DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF
23 and other Class Members and Aggrieved Employees did not receive lawful meal periods.

24 34. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
25 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
26 compliant thirty (30) minute meal period. For example, PLAINTIFF was regularly required to work
27 shifts that lasted longer than 10 hours, and at times worked shifts that lasted 12 hours or more. When
28 PLAINTIFF worked more than ten hours in a shift, DEFENDANTS failed to relieve PLAINTIFF

1 of her work duties and employer control for a second meal period. As such, PLAINTIFF was not
2 provided with a legally compliant second meal period, or any form of a second meal period
3 whatsoever.

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

8 36. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
9 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
10 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
11 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
12 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
13 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
14 58.

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

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

28 39. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 PLAINTIFF and other Class Members and Aggrieved Employees with legally compliant rest
2 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
3 are provided in the middle of the work period, as required by law.

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

8 41. Based on information and belief, DEFENDANTS did not have a compliant written
9 rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.
10 For example, as explained above, PLAINTIFF and other Class Members and Aggrieved Employees
11 were forced to remain on DEFENDANTS' premises during purported rest periods. PLAINTIFF and
12 other Class Members and Aggrieved Employees were not allowed to leave DEFENDANTS' facility
13 on their own. Instead, PLAINTIFF and other Class Members and Aggrieved Employees were
14 required to call the company bus and wait for the bus to pick them up and drive them to the premises'
15 gate in order to exit the premises. Likewise, PLAINTIFF and other Class Members and Aggrieved
16 Employees were not allowed to drive their vehicle or walk up to the facility's entrance. Instead,
17 PLAINTIFF and other Class Members and Aggrieved Employees were required to park outside of
18 the premises, call the company bus and ride the company bus back to the facility's entrance.
19 PLAINTIFF and other Class Members and Aggrieved Employees were not afforded additional time
20 to leave and return to the premises during purported rest periods. As such, PLAINTIFF and other
21 Class Members and Aggrieved Employees were forced to remain on DEFENDANTS' premises in
22 order to receive a full rest period. If and when Class Members and Aggrieved Employees left
23 DEFENDANTS' premises, their rest periods were cut short and/or interrupted/subject to
24 DEFENDANTS' control due to the need to ride the company bus in order to leave and return to the
25 facility.

26 42. Based on information and belief, at other times, Class Members and Aggrieved
27 Employees' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due
28 to understaffing, the nature and constraints of their job duties, and/or due to commentary from

1 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
2 compliant rest periods.

3 43. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
4 lasting longer than ten hours. For example, PLAINTIFF was regularly required to work shifts that
5 lasted longer than 10 hours and at times longer than 12 hours in order to complete assigned work
6 duties including but not limited to assisting with egg packaging. During shifts lasting longer than
7 ten hours, DEFENDANTS failed to provide a third rest period.

8 44. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
10 all duties and DEFENDANTS' control during rest periods.

11 45. Based on information and belief, Class Members and Aggrieved Employees were
12 pressured to complete their work duties according to a designated schedule such that rest periods
13 were only taken once tasks were completed, and/or as time permitted.

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

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

1 employee.

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

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

14 50. Based on information and belief, wage statements issued by DEFENDANTS failed
15 to list the inclusive dates of the pay period for which the Class Member is being paid. For example,
16 on December 6, 2021, DEFENDANTS issued a wage statement to PLAINTIFF, which failed to list
17 the inclusive dates of the pay period. Moreover, this wage statement also failed to list the number
18 of hours worked, the address of the employer, the rate of pay for each hour worked, any deductions,
19 and the gross wages earned.

20 51. Moreover, based on information and belief, DEFENDANTS issued wage statements
21 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
22 section 226(a), by among other things, failing to list the correct name and/or address of the legal
23 entity that is the employer.

24 52. Moreover, based on information and belief, DEFENDANTS split overtime pay into
25 two sections on wage statements requiring PLAINTIFF and Class Members and Aggrieved
26 Employees to perform extensive calculations to determine what their pay rates were for each
27 corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).

28 53. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
16
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
2 required information. As such, DEFENDANTS violated Labor Code section 226.

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

8 55. Upon separation of employment, Class Members and Aggrieved Employees' final
9 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
10 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
11 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
12 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
13 sick leave and/or paid time off wages at the properly accrued rates.

14 56. These violations subject DEFENDANTS to civil penalties under Labor Code section
15 203, 210, and/or 256.

16 57. **Unreimbursed Business Expenses.** Based on information and belief,
17 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
18 business expenses as a direct consequence of the performance of their job duties without providing
19 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
20 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
21 and maintain work tools that are supposed to be the responsibility of the employer.

22 58. Based on information and belief, DEFENDANTS shifted the costs of doing business
23 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
24 including but not limited to the use of Class Members and Aggrieved Employees personal mobile
25 phone and data usage for work related purposes including but not limited to receiving and
26 responding to work related messages and/or phone calls. For example, PLAINTIFF and other Class
27 Members and Aggrieved Employees were required to use their personal cell phone to call the
28 company bus to pick them up from the facility at the end of a shift and/or during purported meal

1 and/or rest periods. PLAINTIFF and other Class Members and Aggrieved Employees also receive
2 work related calls and/or messages to their personal phone including but not limited to notifications
3 regarding a change in a scheduled shift.

4 59. Based on information and belief, DEFENDANTS regularly failed to reimburse and
5 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
6 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
7 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
8 and/or carrying out the duties assigned by DEFENDANTS.

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

13 61. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
14 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
15 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

16 **FIRST CAUSE OF ACTION**

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

19 62. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 63. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
21 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
22 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
23 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
24 period is unlawful.

25 64. DEFENDANTS violated California's minimum wage laws by failing to compensate
26 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
27 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
28 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
and/or payment according to scheduled hours worked rather than actual hours worked (described

1 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
2 wages.

3 65. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
4 Class Members for all hours worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **Recovery of Unpaid Overtime Wages**

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

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

18 69. Employees in California must be paid overtime, equal to one and one-half times the
19 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
20 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
21 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
22 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
23 consecutive day of work in a workweek, unless they are exempt.

24 70. PLAINTIFF and the Class Members worked overtime hours for which they were not
25 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
26 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
27 other pre-shift, and/or otherwise off-the-clock work, and/or payment according to scheduled hours
28 worked rather than actual hours worked (described above), which resulted in the failure to account
for all hours worked and thus the denial of all owed overtime wages.

1 71. Based on information and belief, DEFENDANTS failed to pay twice Class
2 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
3 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
4 violation of California's overtime laws.

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

12 73. DEFENDANTS' conduct described above is in violation of California Labor Code
13 sections 510 and 1194 and all applicable Wage Orders.

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

16 **THIRD CAUSE OF ACTION**

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

19 75. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 76. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
21 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
22 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
23 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
24 waived, but only under the following circumstances: (1) if an employee's total work period in a day
25 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
26 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
27 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
28 waived by mutual consent of the employer and employee, but only if the first meal period was not
waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their

1 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
2 done so.

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

7 78. As explained above, PLAINTIFF and other Class Members were consistently unable
8 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
9 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
10 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
11 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
12 completely. Moreover, as explained above, PLAINTIFF and other Class Members were required to
13 remain on DEFENDANTS' premises during meal periods and/or were forced to take short meal
14 periods if they attempted to leave DEFENDANTS' premises.

15 79. Based on information and belief, DEFENDANTS had and continue to have a policy
16 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
17 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
18 Members did not receive legally compliant meal periods.

19 80. Moreover, Class Members did not receive a timely, uninterrupted second meal period
20 when working shifts over ten (10) hours in a workday.

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

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

1 for purposes of calculating the owed meal period premium.

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

6 **FOURTH CAUSE OF ACTION**

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

8 84. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

19 86. If the employer fails to provide any required rest period, the employer must pay the
20 employee one hour of pay at the employee's regular rate of compensation for each workday the
21 employer did not provide at least one legally required rest period, pursuant to Labor Code section
22 226.7.

23 87. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
24 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
25 any purported rest periods were late, interrupted, cut short, on duty, restricted to premises, and/or
26 otherwise subject to DEFENDANTS' control due to the nature and constraints of Class Members'
27 job duties, understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class
28 Members to skip rest periods completely or otherwise take non-compliant rest periods. Moreover,

1 as explained above, Class Members were required to remain on DEFENDANTS' premises during
2 rest periods in order to receive a full rest period.

3 88. Based on information and belief, DEFENDANTS implemented policies and/or
4 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
5 control during rest periods. Based on further information and belief, Class Members were pressured
6 to complete their work duties according to a designated schedule such that rest periods were only
7 taken once tasks were completed, and/or as time permitted.

8 89. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
9 second, or third rest periods as required by California law.

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

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

21 **FIFTH CAUSE OF ACTION**

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

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

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

27 (1) gross wages earned, (2) total hours worked by the employee,
28 except for any employee whose compensation is solely based on a
salary and who is exempt from payment of overtime under

1 subdivision (a) of Section 515 or any applicable order of the Industrial
2 Welfare Commission, (3) the number of piece-rate units earned and
3 any applicable piece rate if the employee is paid on a piece-rate basis,
4 (4) all deductions, provided that all deductions made on written orders
5 of the employee may be aggregated and shown as one item, (5) net
6 wages earned, (6) the inclusive dates of the period for which the
7 employee is paid, (7) the name of the employee and his or her social
8 security number, except that by January 1, 2008, only the last four
9 digits of his or her social security number or an employee
10 identification number other than a social security number may be
11 shown on the itemized statement, (8) the name and address of the
12 legal entity that is the employer, and (9) all applicable hourly rates in
13 effect during the pay period and the corresponding number of hours
14 worked at each hourly rate by the employee.

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

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

96. As explained above, wage statements issued by DEFENDANTS failed to list the
"total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,

1 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
2 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
3 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
4 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
5 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
6 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

7 97. Separately, and independent from the above allegations, based on information and
8 belief, DEFENDANTS issued wage statements to PLAINTIFF and Class Members that violate
9 Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal entity
10 that is the employer.

11 98. As explained above, based on information and belief, at least some wage statements
12 issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the Class
13 Member is being paid.

14 99. DEFENDANTS' failure to accurately list all hours worked on all wage statements
15 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
16 Members over whether they received all wages owed to them.

17 100. As a result, PLAINTIFF and other Class Members have suffered injury as they could
18 not easily determine whether they received all wages owed to them and whether they were paid for
19 all hours worked.

20 101. Moreover, based on information and belief, DEFENDANTS split overtime pay into
21 two sections on PLAINTIFF's wage statements requiring PLAINTIFF and other Class Members to
22 perform extensive calculations to determine what their pay rates were for each corresponding hour
23 worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).

24 102. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
25 Class Members with accurate, itemized wage statements.

26 103. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
27 have suffered injury. The absence of accurate information on their wage statements has prevented
28 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and

1 mathematical computations to determine the amount of wages owed, and will cause difficulty and
2 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
3 submission of inaccurate information about wages and amounts deducted from wages to state and
4 federal government agencies. As a result, PLAINTIFF and Class Members are required to
5 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
6 and pay records than if DEFENDANT had complied with its legal obligations.

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

11 105. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
12 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
13 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
14 provide currently employed Class Members with inaccurate wage statements in violation of
15 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
16 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
17 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
18 with California Labor Code § 226(a).

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

22 **SIXTH CAUSE OF ACTION**

23 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 24 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

25 107. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

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

5 110. Based in information and belief, DEFENDANTS failed and continue to fail to timely
6 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
7 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
8 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
9 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
10 paid time off wages at the properly accrued rates.

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

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

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

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

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

115. As described above, PLAINTIFF and the Class Members were improperly required to pay for business expenses that are legally the responsibility of the employer, including but not limited to use of their personal mobile phone and data usage for work related purposes.

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

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

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

EIGHTH CAUSE OF ACTION

Unfair Competition

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

120. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to, including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary compensation into the sick pay calculation and failure to base the accrued sick leave on the correct number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and

1 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
2 and practices).

3 121. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
4 California Labor Code, DEFENDANTS have gained a competitive advantage over other
5 comparable companies doing business in the State of California that comply with their obligations
6 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
7 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
8 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
9 minimum and overtime wages and to pay all wages due upon separation of employment of their
10 employees.

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

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

20 **NINTH CAUSE OF ACTION**

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

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

23 124. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

24 125. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
25 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFF,
26 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:

27 All current and former non-exempt employees that worked either
28 directly or via a staffing agency for DEFENDANTS at any location

1 in California at any time from one year plus 65 days from the filing
2 of the initial Complaint through the present ("PAGA Period").

3 126. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
4 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
5 limitations period and suffered one or more of the Labor Code violations set forth herein.
6 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
7 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
8 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
9 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
10 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*
11 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
12 for all known violations committed by the employer - regardless of whether Plaintiff experienced
13 all violations personally. *Id.* at 760-761.

14 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

15 127. On September 26, 2022, PLAINTIFF, through counsel, gave written notice by online
16 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
17 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
18 in this Complaint ("PAGA Notice").

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

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

28 130. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
30 PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
2 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
3 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
4 applicable Wage Orders.

5 131. As set forth above, DEFENDANTS have committed numerous violations of the
6 California Labor Code due to including but not limited to their failure to pay all owed minimum
7 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
8 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
9 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
10 are in addition to any other relief available under the Labor Code.

11 132. Additionally, DEFENDANTS have violated the following Labor Code sections and
12 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

13 **Failure to Keep Accurate Records**

14 133. California Labor Code § 1174 requires employers to keep “accurate and complete”
15 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
16 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
17 times during which all owed meal periods were provided each day.

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

23 135. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
24 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
25 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
26 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
27 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
28

1 period during which the referenced statutes and Wage Order provisions were violated.³

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

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

9 137. Section (b) of Labor Code section 226 further requires employers to "afford current
10 and former employees the right to inspect or receive a copy of records pertaining to their
11 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
12 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
13 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
14 the request as soon as practicable, but no later than 21 calendar days from the date of the request.
15 A violation of this subdivision is an infraction." An employer's failure to comply within this
16 timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)
17 penalty from the employer. Lab. Code section 226(f).

18 138. Personnel Records. In addition to their right to time and pay records, employees, and
19 their representatives, have the right to inspect and receive a copy of their personnel files pursuant
20 to Labor Code section 1198.5. This statute applies to both former and current employees. Labor
21 Code section 432 further specifies that employers must furnish copies of all employment records
22 bearing the employee's signature. Labor Code section 1198.5 also requires that the file be made
23 available for inspection or receipt within a "reasonable" amount of time, but "not later than 30
24 calendar days from the date the employer receives a written request." An employer's failure to

25 ³ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "in addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 comply within this timeframe likewise entitles a current or former employee to recover a seven
2 hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

3 139. DEFENDANTS fail to timely produce or make available Aggrieved Employees'
4 personnel records and/or payroll records when requested pursuant to Labor Code sections 226,
5 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a request for payroll
6 and personnel records to DEFENDANTS on January 10, 2022, and again on February 23, 2022.
7 Yet, DEFENDANTS failed to produce any records at all within the time periods delineated by
8 California labor law. Based on information and belief, DEFENDANTS failed and continue to fail
9 to timely produce complete time, pay, and personnel records when requested by other Aggrieved
10 Employees. These violations subject DEFENDANTS to penalties under Labor Code sections 226,
11 1198.5, and 2699.

12 **Statutory Wage Violations**

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

24 **Refusal to Make Payment**

25 141. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
26 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
27 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
28 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each

1 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
2 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
3 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
4 each Aggrieved Employee, for each pay period during which the statute provisions were violated.⁴

5 **Standard Conditions of Labor Violations**

6 142. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
7 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
8 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
9 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS’
10 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
11 and minimum/overtime wages result in separate violations of sections 1198 and 1199, which
12 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

13 **Sick Leave Violations**

14 143. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
15 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
16 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
17 DEFENDANTS’ failure to account for actual hours worked (as explained above), and/or failure to
18 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
19 not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate
20 compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

21 144. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
22 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
23 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of
24 used sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF
25 and Aggrieved Employees’ intelligent exercise of their paid sick leave.

26
27 ⁴ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

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

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

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

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

15 149. On information and belief, PLAINTIFF alleges that all of these practices were
16 experienced and continue to be experienced by other Aggrieved Employees.

17 150. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
18 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
19 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

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

21 151. Labor Code § 248.2 provides that all employers with 26 or more employees are
22 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
23 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
24 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
25 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
26 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
27 Labor Code section 248.6.

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

1 152. California Labor Code section 227.3 provides that when an employer policy
2 provides for paid vacations and/or paid time off, and an employee is terminated without having
3 taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as
4 wages at the employee's final rate in accordance with such contract of employment or employer
5 policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation
6 time or paid time off upon termination. Based on information and belief, DEFENDANTS had and
7 continue to have a uniform policy and practice of failing to allow Aggrieved Employees to use their
8 earned vacation/paid time off during their employment and failing to pay all vested, accrued paid
9 time off to Aggrieved Employees upon separation of employment, in violation of California law,
10 including but not limited to, Labor Code section 227.3.

11 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

12 153. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall
13 require any employee or applicant for employment to agree, in writing, to any term or condition
14 which is known by such employer...to be prohibited by law." DEFENDANTS required and
15 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to submit to unlawful
16 criminal and/or financial checks as a condition of obtaining and/or continuing employment.

17 154. The California Labor Code places certain procedural and substantive limits on an
18 employers' ability to conduct employee background checks and on how employers can use the
19 information they obtain through those background checks. Labor Code section 1024.5 states that
20 employers, except for financial institutions, may order a credit check only if the individual works
21 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
22 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
23 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
24 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
25 background check, including but not limited to identifying an appropriate reason for the background
26 check, a separate consent form with required disclosures and certain formatting requirements,
27 additional forms such as a summary of rights, a way by which to request a copy of the report, as
28 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

13 158. Based on further information and belief, DEFENDANTS knew that requiring
14 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
15 condition of obtaining and/or holding employment was unlawful.

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

18 Unlawful Inquires into Criminal History

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

23 161. Upon information and belief, DEFENDANTS, in violation of California law,
24 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
25 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
26 employment and/or otherwise impermissibly inquired into criminal history on its employment
27 application in violation of California law.

28 162. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
PLAINTIFF’S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Code section 432.7. By asking about convictions at the application phase or prior to extending an
2 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
3 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
4 disclose arrests and/or convictions as a condition of employment.

5 163. Under the provisions of PAGA and the above mentioned Labor Code sections,
6 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
7 227.3, 245-248.6, 256, 432, 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
8 1197.1, 1198, 1198.3, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders
9 as well as all interpretations of these laws by California Courts and administrative bodies, as well
10 as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
11 penalties:

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

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

23 **PRAYER FOR RELIEF**

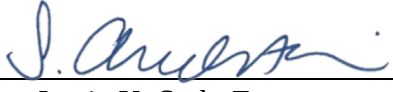
24 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of herself and Class
25 Members and Aggrieved Employees as follows:

- 26 1. For an order that the action be certified as a class action;
- 27 2. For an order that PLAINTIFF be appointed as class representative;
- 28 3. For an order that counsel for PLAINTIFF be appointed as class counsel;

4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred;
12. For civil penalties according to proof, including PAGA penalties (75% payable to the LWDA and 25% payable to Aggrieved Employees); and
13. For such other and further relief that the Court deems just and proper.

Dated: October 16, 2023

CROSNER LEGAL, PC

By: 
Jamie K. Serb, Esq.
Sepideh Ardestani, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
MARIA DIAZ

DEMAND FOR JURY TRIAL

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

Dated: October 16, 2023

CROSNER LEGAL, PC

By: 
Jamie K. Serb, Esq.
Sepideh Ardestani, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
MARIA DIAZ