

1 MICHAEL R. CROSNER, ESQ. (SBN 41299)
mike@crosnerlegal.com
2 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
3 JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
4 SEPIDEH ARDESTANI, ESQ. (SBN 274259)
sepideh@crosnerlegal.com
5 **CROSNER LEGAL, PC**
9440 Santa Monica Blvd. Suite 301
6 Beverly Hills, CA 90210
Tel: (310) 496-5818
7 Fax: (310) 510-6429

8 Attorneys for Plaintiff DOUGLAS BALL
9 on behalf of himself, the State of California,
and others similarly situated and aggrieved,

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

12 DOUGLAS BALL, on behalf of himself,
13 the State of California, and others similarly
situated and aggrieved,

14
15 Plaintiff,

16 v.

17 KRUGER FOODS, INC., a California
18 corporation; and DOES 1-100, inclusive,

19 Defendants.

Case No.:

STK-CV-VOE-2022-11019

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

FILED
SUPERIOR COURT

2022 NOV 30 AM 11:48

BRANDON E. RILEY, CLERK

BY JESSICA CAYO
DEPUTY

1 Plaintiff, DOUGLAS BALL (“PLAINTIFF”), an individual on behalf of himself the State
2 of California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants KRUGER FOODS, INC., a California corporation; and DOES 1-100, inclusive,
4 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
5 thereon alleges as follows:

6 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
24 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
25 in the State of California as a non-exempt employee from in or around December 2021 through on
26 or about January 20, 2022.

27 5. PLAINTIFF worked for DEFENDANTS as a maintenance technician and/or similar
28 title at DEFENDANTS’ processing facility located in Stockton, California.

6. Defendant KRUGER FOODS, INC., is a California Corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. DEFENDANTS own, operate, or otherwise manage a food production business that produces primarily pickles, peppers, and condiments for sale to commercial establishments.¹

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

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

JOINT LIABILITY

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

¹ See <https://www.krugerfoods.com/about>. Last visited on September 23, 2022.

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

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

20 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
21 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
22 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
23 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
24 policies and practices regardless of the location(s) where they worked. Among other things,
25 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
26 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
27 over the day-to-day operations and employment matters, including the power to hire and fire, set
28 schedules, issue employee policies, and determine rates of compensation across its locations in

1 California; (3) DEFENDANTS utilize the same policies and procedures for all California
2 employees, including issuing the same employee handbooks and other form agreements; (4)
3 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
4 employment matters; and, (6) DEFENDANTS share employees.

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

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

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

1 PLAINTIFF seeks relief in this Complaint.

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

5 17. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must
6 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
7 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform
8 services from which they benefited, and furthermore that the aforementioned entities had the right
9 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant
10 times herein, so as to be considered the joint employers of PLAINTIFF.

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

14 **PAGA ALLEGATIONS**

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

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

22 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
23 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
24 limitations period and suffered one or more of the Labor Code violations set forth herein.
25 Accordingly, PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other
26 Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and
27 costs. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all
28 Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby

1 affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.*
2 (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known
3 violations committed by the employer – regardless of whether Plaintiff experienced all violations
4 personally. *Id.* at 760-761.

5 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

6 21. On September 21, 2022, PLAINTIFF, through counsel, gave written notice by online
7 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
8 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
9 in this Complaint (“PAGA Notice”). The PAGA Notice outlined PLAINTIFF's claims for violations
10 of the California Labor Code and the applicable wage orders on behalf of himself, the State of
11 California and other Aggrieved Employees. The LWDA assigned PLAINTIFF the following case
12 number: LWDA-CM-909387-22. Attached hereto as **Exhibit 1** is a true and correct copy of
13 PLAINTIFF’s PAGA Notice that was also mailed certified to DEFENDANTS.

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

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

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

26 **FACTUAL ALLEGATIONS**

27 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
28 worked for DEFENDANTS in the State of California. At all times referenced herein,

1 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
2 permitted them to work.

3 26. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
4 PLAINTIFF worked for DEFENDANTS as a maintenance technician or similar title at
5 DEFENDANTS' processing facility in Stockton, California, from in or around December 2021
6 through on or about January 20, 2022. PLAINTIFF regularly worked at least ten (10) hours per day,
7 at least four (4) days per week.

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

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

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

23 30. Based on information and belief, other Aggrieved Employees were not paid for all
24 hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
25 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

26 31. For example, PLAINTIFF was required to show up to work each day prior to the
27 start of his scheduled shift time to receive a debriefing/ "pass down" of information from the
28 previous shift worker and or to complete other work tasks prior to clocking in for the start of his

1 shift. This pre-shift off-the clock work was neither recorded nor compensated, resulting in an
2 average of thirty minutes of off-the-clock work each workday and the significant underpayment of
3 minimum and overtime wages owed to PLAINTIFF. Based on information and belief, other
4 Aggrieved Employees were also required to arrive at work prior to the start of their scheduled shift
5 times to receive debriefings/pass down(s) from the previous shift and or complete other pre-shift
6 off-the-clock work tasks that were neither recorded nor compensated, resulting in the significant
7 underpayment of wages owed to Aggrieved Employees.

8 32. Moreover, based on information and belief, PLAINTIFF and other Aggrieved
9 Employees were required to perform additional off-the-clock work for which they were not
10 compensated. For example, based on information and belief, DEFENDANTS did not compensate
11 PLAINTIFF and other Aggrieved Employees for time spent donning and doffing personal protective
12 equipment, safety equipment and/or uniforms/work clothing (e.g., protective hard hats/ “bump
13 caps”, goggles/glasses, and/or face masks) during meal periods, rest periods, before the start of a
14 scheduled shift, and after completing a scheduled shift.

15 33. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
16 also required to complete off-the-clock work outside of scheduled shifts and/or during unpaid meal
17 periods due to work-related phone calls and/or messages they received to their personal
18 phones/mobile devices and were required to respond to, including but not limited to,
19 communications from supervisors, resulting in significant off-the-clock work. For example,
20 PLAINTIFF estimates he received calls and/or messages at least once per week from his supervisor
21 to discuss scheduling and/or work assignments but was not compensated for this time spent under
22 DEFENDANTS control responding to these work-related calls/messages outside of his scheduled
23 shift times.

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

1 35. Based on further information and belief, DEFENDANTS' fingerprint scanning
2 system/electronic employee time-keeping system regularly malfunctioned such that PLAINTIFF
3 and other Aggrieved Employees were frequently required to either reinitiate the system prior to
4 being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock
5 back in from meal periods, resulting in consistent off-the-clock work and the underpayment of
6 minimum and overtime wages owed to Aggrieved Employees. Based on information and belief,
7 Aggrieved Employees experienced the same issues when clocking out for shifts and/or back in for
8 meal periods. This time spent under DEFENDANTS' control was not recorded and not
9 compensated and resulted in unpaid minimum wages.

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

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

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

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

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

6 41. Alternative Workweek Schedule Violations (Labor Code Section 511 and All
7 Applicable Wage Orders, Section 3): Per California Labor Code section 511, an employer may
8 adopt a regularly scheduled alternative workweek consisting of shifts over eight (8) hours per day
9 but no more than ten (10) hours per day, within a 40-hour workweek, without payment of overtime
10 being required for those hours. Cal. Lab. Code § 511(a). If an employee with an alternative
11 workweek works more than the scheduled work hours in any day, the employee is entitled to be paid
12 1.5 times his regular pay rate for the excess hours worked up to twelve (12) hours, and for any time
13 worked in excess of 40 hours that week. Cal. Lab. Code § 511(b). If the employee works more than
14 twelve (12) hours in a day, the employee is entitled to be paid twice his regular rate of pay for time
15 worked in excess of the twelve (12) hours. Id. An employee is also entitled to compensation at
16 twice his regular rate of pay for any time worked beyond eight (8) hours on a day that is not a
17 scheduled workday. Id.

18 42. Moreover, Section 3(B)(2) of all applicable IWC Wage Orders provides that “[i]f an
19 employer, whose employees have adopted an alternative workweek agreement permitted by this
20 order requires an employee to work fewer hours than those that are regularly scheduled by the
21 agreement, the employer shall pay the employee overtime compensation at a rate of one and one-
22 half times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours, and
23 double the employee’s regular rate of pay for all hours worked in excess of 12 hours for the day the
24 employee is required to work the reduced hours.”

25 43. Based on information and belief, PLAINTIFF and other Aggrieved Employees
26 worked subject to an alternative work week schedule in which Aggrieved Employees were
27 scheduled to work ten (10) hours per shift, four (4) shifts per week. According to the California
28 Department of Industrial Relations Alternative Workweek Elections Database, DEFENDANTS

1 conducted various elections to adopt a 4/10 alternative workweek schedule (“AWS”), including, in
2 2007 and 2009, which were subsequently approved. Pursuant thereto, DEFENDANTS were
3 required to pay Aggrieved Employees at their base rate(s) for the first ten (10) hours in a shift and
4 required to pay 1.5 times the base rate(s) for time worked over 40 hours in a week. However, based
5 on information and belief, on various diverse dates, PLAINTIFF and other Aggrieved Employees
6 were sent home between one (1) to two (2) hours before completing their ten-hour shifts. On such
7 shortened shifts, PLAINTIFF and other Aggrieved Employees were entitled to overtime pay at 1.5
8 times their regular rate(s) of pay after the first eight (8) hours of work. Instead, DEFENDANTS paid
9 PLAINTIFF and other Aggrieved Employees their respective base rate(s) for all scheduled hours
10 worked on the shortened shift(s) in violation of the alternative workweek schedule, and in violation
11 of California Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section
12 1198.

13 44. Based on further information and belief, DEFENDANTS required PLAINTIFF and
14 other Aggrieved Employees to work more than eight (8) hours on days that were not scheduled
15 workdays without compensating PLAINTIFF and other Aggrieved Employees at twice their regular
16 rate(s) of pay for the time worked beyond eight (8) hours on those days, in violation of California
17 overtime laws, including but not limited to, California Labor Code sections 510 and 511, the
18 applicable Wage Order, and Labor Code section 1198.

19 45. Based on further information and belief, DEFENDANTS failed to comply with all
20 mandated procedures for proper adoption and implementation of an alternative workweek schedule
21 and/or failed to compensate PLAINTIFF and other Aggrieved Employees according to the terms of
22 the alternative workweek schedule and/or in compliance with California Labor Code sections 510,
23 511, all applicable IWC Wage Orders, and Labor Code section 1198.

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

1 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
2 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
3 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
4 completely. For example, PLAINTIFF estimates his meal periods were interrupted and/or late at
5 least once per week due to the need to respond to work-related communications on his company
6 walkie talkie/radio, attend to machinery/the production line and/or complete other work tasks.
7 Based on information and belief, other Aggrieved Employees were also consistently forced to take
8 late and/or interrupted meal periods due to the need to respond to work-related communications,
9 attend to machinery/the production line and /or complete other work tasks.

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

15 48. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
17 during unpaid meal periods. For example, based on information and belief, PLAINTIFF and other
18 Aggrieved Employees were required to monitor their company walkie talkies/radios and respond to
19 any communications that came through, including during purportedly off-duty meal periods.

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

24 50. Based on information and belief, despite DEFENDANTS' failure to provide lawful
25 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
26 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
27 deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite
28 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did

1 not receive lawful meal periods.

2 51. Moreover, based on information and belief, Aggrieved Employees who worked shifts
3 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
4 For example, when PLAINTIFF worked more than ten hours in a shift, PLAINTIFF was not
5 provided with a second meal period.

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

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

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

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

27 56. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
28 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every

1 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
2 middle of the work period, as required by law.

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

7 58. Based on information and belief, DEFENDANTS did not have a have a compliant
8 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
9 practice. For example, based on information and belief, DEFENDANTS' written rest period policy
10 failed/fails to authorize rest periods at a rate of every four hours worked or major fraction thereof.

11 59. Based on information and belief, Aggrieved Employees' rest periods were
12 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and
13 constraints of their job duties, and/or due to commentary from supervisors/managers pressuring
14 them to skip rest periods completely or otherwise take non-compliant rest periods. For example,
15 PLAINTIFF was consistently required to work through his rest periods due to the need to respond
16 to work-related communications on his company walkie talkie/radio, attend to machinery/the
17 production line and/or complete other work tasks. Based on information and belief, other Aggrieved
18 Employees were also consistently forced to work through their rest periods due to the need to
19 respond to work-related communications, attend to machinery/the production line and /or complete
20 other work tasks.

21 60. Moreover, based on information and belief, DEFENDANTS failed to provide any
22 form of a third rest period on shifts lasting longer than ten hours. For example, when PLAINTIFF
23 worked shifts lasting longer than ten (10) hours, he was not provided any form of a third rest period.

24 61. Based on information and belief, DEFENDANTS implemented policies and/or
25 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
26 DEFENDANTS' control during rest periods. For example, based on information and belief,
27 PLAINTIFF and other Aggrieved Employees were required to monitor their company walkie
28 talkies/radios and respond to any communications that came through, including, during any

1 purportedly off-duty rest periods. Moreover, based on information and belief, PLAINTIFF and
2 Aggrieved Employees were required to remain on DEFENDANTS' premises and tethered to their
3 worksites during purportedly off-duty rest periods.

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

7 63. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
8 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in
9 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
10 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
11 for failure to incorporate all non-discretionary remuneration, including but not limited to,
12 bonuses/incentive pay, shift differential pay, and/or other non-discretionary compensation into the
13 regular rate of compensation for purposes of calculating the owed rest period premium.

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

22 65. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
23 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
24 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
25 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
26 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
27 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
28 other off-the-clock work policies and practices) which results in a violation of Labor Code sections

1 226(a)(1), 226(a)(2), 226(a)(5) and 226(a)(9).

2 66. As described herein, based on information and belief, DEFENDANTS also failed to
3 incorporate all forms of non-discretionary compensation earned during the pay period into the
4 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
5 of overtime worked by PLAINTIFF and other Aggrieved Employees, in violation of Labor Code
6 section 226(a), including but not limited to, Labor Code section 226(a)(9).

7 67. Moreover, based on information and belief, DEFENDANTS issued wage statements
8 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
9 other things, failing to list the correct name and/or address of the legal entity that is the employer,
10 in violation of Labor Code section 226(a)(8).

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

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

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

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

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

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

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

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

9 74. The Aggrieved Employees worked in various positions, including but not limited to,
10 maintenance technicians, quality control technicians, and fabricators. The nature of PLAINTIFF's
11 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
12 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
13 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
14 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
15 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
16 Aggrieved Employee, results in a separate civil penalty.

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

25 76. DEFENDANTS have failed and continue to fail to keep accurate and complete
26 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
27 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, failure to record the true start and end times of meal

1 periods, shift start times and shift end times, and other off-the-clock work policies and practices
2 described herein.

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

9 **78.** Based on information and belief, DEFENDANTS shifted the costs of doing business
10 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
11 to, uniforms and/or the use of Aggrieved Employees' personal mobile phone and data usage for
12 work related purposes including but not limited to receiving and responding to work related
13 messages and/or phone calls. For example, PLAINTIFF estimates he received calls and/or messages
14 to his personal cell phone at least once per week from his supervisor to discuss scheduling and/or
15 work assignments and also had to use his personal cell phone for additional work purposes, such as
16 but not limited to, to take pictures of parts identification numbers and/or machinery in order to
17 perform the duties of his job. PLAINTIFF was not reimbursed by DEFENDANTS for this business
18 use of his personal cell phone. Based on information and belief, DEFENDANTS also failed to
19 reimburse PLAINTIFF and other Aggrieved Employees at all and/or in full for the costs associated
20 with purchasing and/or maintaining their own uniforms/work clothing and/or protective
21 equipment/gear, such as, but not limited to, Covid-protection masks that DEFENDANTS required
22 PLAINTIFF and other Aggrieved Employees wear for work. While at times DEFENDANTS
23 supplied Covid-protection masks, the supply was inadequate such that PLAINTIFF and other
24 Aggrieved Employees were required to purchase their own Covid-protection masks yet were not
25 reimbursed for the costs they incurred in connection therewith.

26 **79.** Based on information and belief, PLAINTIFF and other Aggrieved Employees were
27 improperly required to provide and maintain work tools that are supposed to be the responsibility of
28 the employer. For example, based on information and belief, PLAINTIFF was required to purchase

1 and/or maintain his own tools for use at work, such as, but not limited to, wrenches and/or sockets,
2 but was not reimbursed for the costs associated with having to supply/use his personal tools for
3 work.

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

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

13 82. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
14 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
15 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
16 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
17 accrued sick leave hours on the correct number of hours worked (as a result of the
18 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
19 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
20 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
21 not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate
22 compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

23 83. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
24 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
25 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
26 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
27 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
28 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of

1 used sick leave and the balance of paid sick leave.

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

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

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

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

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

1 89. Upon separation of employment, Aggrieved Employees' final paychecks were not
2 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
3 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
4 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
5 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
6 accrued rates.

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

12 91. **Statutory Wage Violations.** As described above, DEFENDANTS willfully and
13 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
14 for all hours worked which resulted in the payment of less than the statutorily required wages owed
15 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
16 not limited to, overtime wages and minimum wages, to which they were entitled to under California
17 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
18 Aggrieved Employees lower wages than those they were entitled to while purporting that
19 PLAINTIFF and other Aggrieved Employees were properly paid.

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

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

28 94. **Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,

1 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
2 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
3 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
4 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

5 **95. Unlawful Inquiries into Salary History:** Based on information and belief,
6 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal
7 their salary history when applying for employment with DEFENDANTS. For example, on
8 information and belief, when PLAINTIFF applied for employment with DEFENDANTS,
9 PLAINTIFF was required to fill out an application that requested, among other things, the following
10 information: Name and address of former employer, length of former employment relationship, and
11 the “starting” and “ending” “hourly rate/salary” and/or “base rate of pay” of the former employment
12 relationship. Based on information and belief, DEFENDANTS required other Aggrieved Employees
13 to disclose the same or similar information, in violation of Labor Code section 432.3. Moreover, by
14 requiring Aggrieved Employees to disclose prior salary information in a written application for
15 employment, DEFENDANTS violated Labor Code section 432.5 by requiring Aggrieved
16 Employees to agree in writing to disclose their salary history as a condition of obtaining employment
17 with DEFENDANTS, in violation of California law.

18 **96. Unlawful Agreements-Unlawful Criminal History Inquiries. Unlawful Financial**
19 **and Criminal Background Checks.** Based on information and belief, DEFENDANTS required
20 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
21 limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
22 employment in violation of Labor Code section 432.5.

23 **97.** Based on information and belief, DEFENDANTS ordered unlawful financial credit
24 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
25 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
26 employment, in violation of California and Federal law, which results in a further violation of Labor
27 Code section 432.5.

28 **98.** Based on information and belief, DEFENDANTS also required Aggrieved

1 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
2 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
3 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
4 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*)

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

15 100. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
16 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
17 section 432.5.

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

23 102. Based on further information and belief, DEFENDANTS knew that requiring
24 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
25 condition of obtaining and/or holding employment was unlawful.

26 103. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
27 condition of employment, DEFENDANTS violated Labor Code section 432.5.

28 Unlawful Inquires into Criminal History

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

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

10 106. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
11 engaged in these same herein described unlawful practices, which led to violations of the California
12 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
13 unlawful practices to all of its employees that it applied to PLAINTIFF.

14 **FIRST CAUSE OF ACTION**
15 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
16 **2698, *ET SEQ.***

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

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

20 **Failure to Keep Accurate Records**

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

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

 110. DEFENDANTS’ failure to keep “accurate and complete” payroll records for

1 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
2 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
3 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
4 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
5 period during which the referenced statutes and Wage Order provisions were violated.²

6 **Meal Period Violations**

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

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

20 113. Employers covered by any and all applicable IWC Wage Orders have an obligation
21 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
22 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
23 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
24 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing

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

1 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
2 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
3 provided”).

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

11 115. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
12 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
13 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
14 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
15 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
16 periods completely.

17 116. Based on information and belief, DEFENDANTS had and continue to have a policy
18 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty
19 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
20 Aggrieved Employees did not receive compliant meal periods.

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

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

27 119. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
28 periods in violation of California law and/or failed to pay the proper meal period premium for failure

1 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
2 differential pay and/or other non-discretionary compensation into the regular rate or compensation
3 for purposes of calculating the owed meal period premium.

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

9 **Rest Period Violations**

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

24 122. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
25 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
26 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
27 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
28 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved

1 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

15 126. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
16 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
17 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

18 **Minimum and Overtime Wage Violations**

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

26 128. California law also provides that employees in California must be paid overtime,
27 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
28 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers

1 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
2 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
3 consecutive day of work in a work week. *Ibid.*

4 129. As explained above, DEFENDANTS violated California's minimum wage and
5 overtime wage laws by failing to compensate PLAINTIFF and Aggrieved Employees for all hours
6 worked by virtue of, among other things, DEFENDANTS' time rounding, automatic deduction for
7 meal periods, off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift
8 and/or otherwise off-the-clock work, and/or payment according to scheduled hours worked rather
9 than actual hours worked (described above), which resulted in the failure to account for all hours
10 worked and thus the denial of minimum and overtime wages.

11 130. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
12 Aggrieved Employees for all hours worked.

13 131. Based on information and belief, DEFENDANTS had actual or constructive
14 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
15 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
16 periods, policy and practice of payment according to scheduled work time rather than actual work
17 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
18 owed to PLAINTIFF and other Aggrieved Employees.

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

23 133. DEFENDANTS also violated California's overtime laws as to those Aggrieved
24 Employees that were subject to an AWS but were required to work a short shift. Under Section(B)(2)
25 of all applicable IWC Wage Orders, "[i]f an employer, whose employees have adopted an alternative
26 workweek agreement permitted by this order requires an employee to work fewer hours than those
27 that are regularly scheduled by the agreement, the employer shall pay the employee overtime
28 compensation at a rate of one and one-half times the employee's regular rate of pay for all hours

1 worked in excess of eight (8) hours, and double the employee's regular rate of pay for all hours
2 worked in excess of 12 hours for the day the employee is required to work the reduced hours."

3 134. Based on information and belief, PLAINTIFF and other Aggrieved Employees that
4 were subject to an AWS worked a short shift (i.e. less than 10 hours) on various diverse dates during
5 the relevant period. On those shifts, PLAINTIFF and the Aggrieved Employees were entitled to
6 overtime wages at 1.5 times their regular rate of pay for all hours worked over eight hours in the
7 shortened shift. Instead, DEFENDANTS paid PLAINTIFF and Aggrieved Employees at their base
8 rate for all hours worked on the shortened shift, in violation of California's overtime laws.

9 135. Based on further information and belief, DEFENDANTS required PLAINTIFF and
10 other Aggrieved Employees to work more than eight (8) hours on days that were not scheduled
11 workdays without compensating PLAINTIFF and other Aggrieved Employees at twice their regular
12 rate(s) of pay for the time worked beyond eight (8) hours on those days, in violation of California
13 overtime laws, including but not limited to, California Labor Code sections 510 and 511, the
14 applicable Wage Order, and Labor Code section 1198.

15 136. Based on information and belief, DEFENDANTS further violated California's
16 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
17 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
18 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
19 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
20 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
21 other Aggrieved Employees.

22 137. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
23 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
24 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
25 Wage Orders, section 20.

26 **Statutory Wage Violations**

27 138. California Labor Code section 223 makes it unlawful for an employer to secretly pay
28 wages lower than required by statute while purporting to pay legal wages. As described above,

1 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
2 earned minimum and overtime compensation for all hours worked which resulted in the payment of
3 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
4 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
5 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
6 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
7 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
8 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
9 Labor Code § 2699(f)-(g).

10 **Refusal to Make Payment**

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

19 **Business Expense Violations**

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

26 _____
27 ³ 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).

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

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

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

13 144. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with
14 full reimbursement for all reasonable expenses associated with carrying out their duties required
15 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
16 expenses in violation of Labor Code section 2802.

17 145. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
18 Employees have suffered injury in that they were not completely reimbursed as mandated by
19 California law.

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

24 **Wage Statement Violations**

25 147. California law requires every employer semi-monthly or at the time of each payment
26 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
27 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
28 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

1 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
2 is paid; (7) the name of the employee and only the last four digits of his or her social security number
3 or an employee identification number other than a social security number; (8) the name and address
4 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

6 148. c

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

17 150. As explained above, wage statements issued by DEFENDANTS failed to list the
18 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
19 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
20 employer control during unpaid meal periods, payment according to scheduled hours worked rather
21 than actual hours worked, and/or other off-the-clock work policies and practices all described in
22 greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all
23 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section
24 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

25 151. Separately, and independent from the above allegations, DEFENDANTS issued
26 wage statements to PLAINTIFF and Aggrieved Employees that violate Labor Code section
27 226(a)(8), by failing to list the correct name and/or address of the legal entity that is the employer.

28 152. DEFENDANTS' failure to accurately list all hours worked on all wage statements

1 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
2 Employees over whether they received all wages owed to them.

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

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

9 155. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
10 Aggrieved Employees with accurate, itemized wage statements.

11 156. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
12 Employees have suffered injury. The absence of accurate information on their wage statements has
13 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
14 mathematical computations to determine the amount of wages owed, and will cause difficulty and
15 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
16 submission of inaccurate information about wages and amounts deducted from wages to state and
17 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
18 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
19 and pay records than if DEFENDANT had complied with its legal obligations.

20 157. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
21 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
22 during which the statute provisions were violated. ⁴

23 **Seating Violations**

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

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

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

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

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

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

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

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

19 165. The Aggrieved Employees worked in various positions, including but not limited to,
20 maintenance technicians, quality control technicians, and fabricators. The nature of PLAINTIFF's
21 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
22 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
23 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
24 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
25 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
26 Aggrieved Employee, results in a separate civil penalty.

27 **Standard Conditions of Labor Violations**

28 166. Together, Labor Code sections 1198 and 1199 make unlawful any employment of

1 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
2 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
3 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
4 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
5 suitable seating and minimum/overtime wages result in separate violations of sections 1198 and
6 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

7 **Sick Leave Violations**

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

15 168. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
16 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
17 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
18 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
19 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

24 170. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
25 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
26 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
27 were entitled to the maximum number of hours accruable.

28 171. Upon information and belief, DEFENDANTS failed and continue to fail to comply

1 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
2 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
3 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
4 wages.

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

6 173. On information and belief, PLAINTIFF alleges that all of these practices were
7 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

20 176. California Labor Code section 227.3 provides that when an employer policy provides
21 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
22 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
23 employee's final rate in accordance with such contract of employment or employer policy respecting
24 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
25 off upon termination. Based on information and belief, DEFENDANTS had and continue to have a
26 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
27 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
28 to Aggrieved Employees upon separation of employment, in violation of California law, including

1 but not limited to, Labor Code section 227.3.

2 **Untimely Payment of Final Wages**

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

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

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

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

26 181. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
27 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
28 256.

1 **Unlawful Inquiries into Salary History**

2 182. Based on information and belief, DEFENDANTS have a policy and/or practice of
3 unlawfully asking Aggrieved Employees to reveal their salary history when applying for
4 employment with DEFENDANTS. For example, on information and belief, when PLAINTIFF
5 applied for employment with DEFENDANTS, PLAINTIFF was required to fill out an application
6 that requested, among other things, the following information: Name and address of former
7 employer, length of former employment relationship, and the “starting” and “final” “hourly
8 rate/salary” of the former employment relationship. Based on information and belief,
9 DEFENDANTS required other Aggrieved Employees to disclose the same or similar information,
10 in violation of Labor Code section 432.3. Moreover, by requiring Aggrieved Employees to disclose
11 prior salary information in a written application for employment, DEFENDANTS violated Labor
12 Code section 432.5 by requiring Aggrieved Employees to agree in writing to disclose their salary
13 history as a condition of obtaining employment with DEFENDANTS, in violation of California law.

14 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

20 184. The California Labor Code places certain procedural and substantive limits on an
21 employers’ ability to conduct employee background checks and on how employers can use the
22 information they obtain through those background checks. Labor Code section 1024.5 states that
23 employers, except for financial institutions, may order a credit check only if the individual works
24 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
25 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
26 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
27 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
28 background check, including but not limited to identifying an appropriate reason for the background

1 check, a separate consent form with required disclosures and certain formatting requirements,
2 additional forms such as a summary of rights, a way by which to request a copy of the report, as
3 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

21 Unlawful Inquires into Criminal History

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

26 191. Upon information and belief, DEFENDANTS, in violation of California law,
27 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
28 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of

1 employment and/or otherwise impermissibly inquired into criminal history on its employment
2 application in violation of California law.

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

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

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

17 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
18 violations without a civil penalty recoverable under the PAGA, all in the default amounts provided
19 by Labor Code section 2699(f).

20 c. The proper measure of penalties under PAGA is the number of violations, whether
21 those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a
22 party to this action or not.

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

25 **PRAYER FOR RELIEF**

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

28 1. For civil penalties under Labor Code Section 2699 (75% payable to the

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LWDA and 25% payable to Aggrieved Employees);

2. For an order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

3. For reasonable attorney's fees and costs of suit; and

4. For such other and further relief that the Court deems just and proper.

Dated: November 29, 2022

CROSNER LEGAL, PC

By: 

Michael R. Crosner, Esq.

Zachary M. Crosner, Esq.

Jamie Serb, Esq.

Sepideh Ardestani, Esq.

Attorneys for Plaintiff,

DOUGLAS BALL

EXHIBIT 1



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (323) 205-7495
office: (310) 496-5818
fax: (310) 510-6429

September 21, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Northwest Registered Agent, Inc.
Agent for Service of Process for:
Kruger Foods, Inc.
2108 N St Ste N
Sacramento, CA 95816-5712

Kruger Foods, Inc.
Attn: Human Resources/ Legal Department
2108 N St Ste N
Sacramento, CA 95816

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Kruger Foods, Inc.
Date: September 21, 2022
Subject: *Douglas Ball v. Kruger Foods, Inc. et. al.*

Introduction

This office represents COMPLAINANT, Douglas Ball (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Kruger Foods, Inc. (hereinafter, this entity and its managing

agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated

COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

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

General Information

EMPLOYER owns, operates or otherwise manages a food production business that produces primarily pickles, peppers, and condiments for sale to commercial establishments.¹ Although EMPLOYER may operate a successful business or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a maintenance technician or similar title from in or around December 2021 through on or around January 20, 2022, when EMPLOYER terminated COMPLAINANT's employment. COMPLAINANT worked for EMPLOYER out of EMPLOYER's facility located in Stockton, California. COMPLAINANT regularly worked at least ten (10) hours per day, at least four (4) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay

¹ <https://www.krugerfoods.com/about> (last visited September 21, 2022).

calculations; (5) failed and continues to fail to comply with the requirements for proper implementation of and compliance with a proper Alternative Workweek Schedule (AWS), by including but not limited to, failing to pay NON-EXEMPT AGGRIEVED EMPLOYEES correct rates of pay on days where EMPLOYER required they work fewer hours than provided in the AWS; (6) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (7) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (8) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (9) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (10) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (11) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (12) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (13) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (15) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGREIVED EMPLOYEES to disclose their salary history; (16) failed and continues to fail to provide suitable seating; and (17) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.*

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling them to at least one meal period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT estimates his meal periods were interrupted and/or late at least once per week due to the need to respond to work-related communications on his company walkie talkie/radio, attend to machinery/the production line and/or complete other work tasks. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also consistently forced to take late and/or interrupted meal periods due to the need to respond to work-related communications, attend to machinery/the production line and /or complete other work tasks.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their

meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods. For example, based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to monitor their company walkie talkies/radios and respond to any communications that came through, including during purportedly off-duty meal periods.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which EMPLOYER failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT worked more than ten hours in a shift, COMPLAINANT was not provided with a second meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, based on information and belief, EMPLOYER's written rest period policy failed/fails to authorize rest periods at a rate of every four hours worked *or major fraction thereof*.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods. For example, COMPLAINANT was consistently required to work through his rest periods due to the need to respond to work-related communications on his company walkie talkie/radio, attend to machinery/the production line and/or complete other work tasks. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also consistently forced to work through their rest periods due to the need to respond to work-related communications, attend to machinery/the production line and /or complete other work tasks.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked shifts lasting longer than ten (10) hours, he was not provided any form of a third rest period.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods. For example, based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to monitor their company walkie talkies/radios and respond to any communications that came through, including, during any purportedly off-duty rest periods. Moreover, based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain on EMPLOYER's premises and tethered to their worksites during purportedly off-duty rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses/incentive pay, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, COMPLAINANT was required to show up to work each day prior to the start of his scheduled shift time to receive a debriefing/ "pass down" of information from the previous shift worker and or to complete other work tasks prior to clocking in for the start of his shift. This pre-shift off-the clock work was neither recorded nor compensated, resulting in an average of thirty minutes of off-the-clock work each workday and the significant underpayment of minimum and overtime wages owed to COMPLAINANT. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to arrive at work prior to the start of their scheduled shift times to receive debriefings/pass down(s) from the previous shift

and or complete other pre-shift off-the-clock work tasks that were neither recorded nor compensated, resulting in the significant underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform additional off-the-clock work for which they were not compensated. For example, based on information and belief, EMPLOYER did not compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g., protective hard hats/ “bump caps”, goggles/glasses, and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts and/or during unpaid meal periods due to work-related phone calls and/or messages they received to their personal phones/mobile devices and were required to respond to, including but not limited to, communications from supervisors, resulting in significant off-the-clock work. For example, COMPLAINANT estimates he received calls and/or messages at least once per week from his supervisor to discuss scheduling and/or work assignments but was not compensated for this time spent under EMPLOYER control responding to these work-related calls/messages outside of his scheduled shift times.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, EMPLOYER’s fingerprint scanning system/electronic employee time-keeping system regularly malfunctioned such that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were frequently required to either reinitiate the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in consistent off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER’ control was not recorded and not compensated and resulted in unpaid minimum wages.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER’s failure to pay for all time worked by virtue of its time-rounding practices

resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked, off-the-

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

clock/unpaid work completed during meal periods and/or time spent restricted to EMPLOYER's premises and/or subject to EMPLOYER's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus/incentive pay, and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Alternative Workweek Schedule Violations (Labor Code Section 511 and All Applicable Wage Orders, Section 3):

Per California Labor Code section 511, an employer may adopt a regularly scheduled alternative workweek consisting of shifts over eight (8) hours per day but no more than ten (10) hours per day, within a 40-hour workweek, without payment of overtime being required for those hours. Cal. Lab. Code § 511(a). If an employee with an alternative workweek works more than the scheduled work hours in any day, the employee is entitled to be paid 1.5 times his regular pay rate for the excess hours worked up to twelve (12) hours, and for any time worked in excess of 40 hours

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "i>n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

that week. Cal. Lab. Code § 511(b). If the employee works more than twelve (12) hours in a day, the employee is entitled to be paid twice his regular rate of pay for time worked in excess of the twelve (12) hours. Id. An employee is also entitled to compensation at twice his regular rate of pay for any time worked beyond eight (8) hours on a day that is not a scheduled workday. Id.

Moreover, Section 3(B)(2) of all applicable IWC Wage Orders provides that “[i]f an employer, whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee’s regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.”

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES worked subject to an alternative work week schedule in which NON-EXEMPT AGGRIEVED EMPLOYEES were scheduled to work ten (10) hours per shift, four (4) shifts per week. According to the California Department of Industrial Relations Alternative Workweek Elections Database, EMPLOYER conducted various elections to adopt a 4/10 alternative workweek schedule (“AWS”), including, in 2007 and 2009, which were subsequently approved. Pursuant thereto, EMPLOYER was required to pay NON-EXEMPT AGGRIEVED EMPLOYEES at their base rate(s) for the first ten (10) hours in a shift and required to pay 1.5 times the base rate(s) for time worked over 40 hours in a week. However, based on information and belief, on various diverse dates, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were sent home between one (1) to two (2) hours before completing their ten-hour shifts. On such shortened shifts, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to overtime pay at 1.5 times their regular rate(s) of pay after the first eight (8) hours of work. Instead, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES their respective base rate(s) for all scheduled hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in violation of California Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section 1198.

Based on further information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to work more than eight (8) hours on days that were not scheduled workdays without compensating COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES at twice their regular rate(s) of pay for the time worked beyond eight (8) hours on those days, in violation of California overtime laws, including but not limited to, California Labor Code sections 510 and 511, the applicable Wage Order, and Labor Code section 1198.

Based on further information and belief, EMPLOYER failed to comply with all mandated procedures for proper adoption and implementation of an alternative workweek schedule and/or failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES according to the terms of the alternative workweek schedule and/or in compliance with California Labor Code sections 510, 511, all applicable IWC Wage Orders, and Labor Code section 1198.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods that were restricted to EMPLOYER's premises) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT

AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

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

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

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

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

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

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

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

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, suitable seating, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than

72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

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

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. See applicable IWC Wage Order, § 9 (b).

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

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

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer. For example, based on information and belief, COMPLAINANT was required to purchase and/or maintain his own tools for use at work, such as, but not limited to, wrenches and/or sockets, but was not reimbursed for the costs associated with having to supply/use his personal tools for work.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. For example, COMPLAINANT estimates he received calls and/or messages to his personal cell phone at least once per week from his supervisor to discuss scheduling and/or work assignments and also had to use his personal cell phone for additional work purposes, such as but not limited to, to take pictures of parts identification numbers and/or machinery in order to perform the duties of his job. COMPLAINANT was not reimbursed by EMPLOYER for this business use of his personal cell phone.

Based on information and belief, EMPLOYER also failed to reimburse COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES at all and/or in full for the costs associated with purchasing and/or maintaining their own uniforms/work clothing and/or protective equipment/gear, such as, but not limited to, Covid-protection masks that EMPLOYER required COMPLAINANT and other Aggrieved Employees wear for work. While at times EMPLOYER supplied Covid-protection masks, the supply was inadequate such that COMPLAINANT and other Aggrieved EMPLOYEES were required to purchase their own Covid-protection masks yet were not reimbursed for the costs they incurred in connection therewith.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing/personal protective equipment and/or safety gear.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Inquiries into Salary History

Labor code section 432.3 provides in part "(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment." Based on information and belief, EMPLOYER has a policy and/or practice of unlawfully asking NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to reveal their salary history when applying for employment with EMPLOYER. For example, when COMPLAINANT applied for employment with EMPLOYER, COMPLAINANT was required to fill out an application that requested, among other things, the following information: Name and address of former employer, length of former employment relationship, and the "starting" and "final" "hourly rate/salary" of the former employment relationship. Based on information and belief, EMPLOYER required other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose the same or similar information, in violation of Labor Code section 432.3.

Moreover, by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose prior salary information in a written application for employment, EMPLOYER violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose their salary history as a condition of obtaining employment with EMPLOYER, in violation of California law.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.” Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, [[if basis to allege a background check, insert here that employer conducted a background check on complainant.]]

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

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law. For example, [[check employment application to see if application asks about conviction/arrest history, if so, insert language here.]]

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

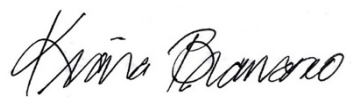
If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, reading "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC