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7 Attorneys for Plaintiff ROSA ALVAREZ
8 As an individual and on behalf of all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 ROSA ALVAREZ, as an individual on
behalf of herself and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 v.

16 BRITEWORKS, INC., a California
17 Corporation; and DOES 1-100, inclusive,

18 Defendants.
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Case No.: 22STCV35169

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

04/28/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

1 Plaintiff, ROSA ALVAREZ (“PLAINTIFF”), an individual on behalf of herself and all other
2 similarly situated Class Members (as defined below) and Aggrieved Employees (defined below),
3 hereby files this First Amended Complaint against Defendants BRITEWORKS, INC., a California
4 Corporation; and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”).
5 PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district.

12 **THE PARTIES**

13 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
14 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
15 in the State of California as a non-exempt employee from in or around 2012 through approximately
16 March 2021. PLAINTIFF worked for DEFENDANTS as a janitor or cleaning technician.

17 3. DEFENDANTS are California corporations and, at all relevant times, were
18 authorized to do business within the State of California and are doing business in the State of
19 California.

20 4. DEFENDANTS provide commercial janitorial services and non-exempt employees
21 as janitorial cleaning staff to carry out its business.

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

28 6. PLAINTIFF is further informed and believes that, at all relevant times, each

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

10 **JOINT LIABILITY**

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

28 8. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class

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

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

20 10. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
21 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF, Class Members and
22 Aggrieved Employees, upon whose behalf PLAINTIFF brings these allegations and causes of
23 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
24 Members’ and Aggrieved Employees’ wages, hours and working conditions, and/or suffered or
25 permitted PLAINTIFF, Class Members, and Aggrieved Employees to work so as to be considered
26 their joint employers.

27 11. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
28 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,

1 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
2 working conditions that were distributed to, and/or applied to PLAINTIFF, Class Members, and
3 Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled the
4 wages of PLAINTIFF, Class Members and Aggrieved Employees in a uniform manner.
5 DEFENDANTS collectively represented to PLAINTIFF, Class Members and Aggrieved Employees
6 that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively
7 retained the right to terminate their employment with or without cause. Upon information and belief,
8 DEFENDANTS further collectively represented to PLAINTIFF, Class Members and Aggrieved
9 Employees in writing the details of their compensation, and the manner in which they were to take
10 meal and rest periods, the procedures required by DEFENDANTS collectively for recordation of
11 hours worked and the policies applicable to PLAINTIFF, Class Members and Aggrieved Employees
12 by which DEFENDANTS collectively would evaluate their wage rates.

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

18 13. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
19 control over, applied the same policies and practices, and engaged in the same acts and omissions
20 with regard to the other Class Members and Aggrieved Employees.

21 **CLASS ALLEGATIONS**

22 14. PLAINTIFF brings this action on behalf of herself, and all others similarly situated
23 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
24 represent are defined as follows and referred to as the "Class" or "Class Members":

25 All current and former non-exempt employees that worked either
26 directly or via a staffing agency for DEFENDANTS at any location
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1 in California at any time within the four years and 178 days prior to
2 the filing of the initial Complaint (“Class Period”).¹

3 a. Numerosity. While the exact number of Class Members is unknown to
4 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
5 all members is impractical under the circumstances of this case. PLAINTIFF is
6 informed and believes the Class consists of at least 100 individuals.

7 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
8 because common questions of law and fact predominate over individual issues.
9 Common questions include, but are not limited to, the following: (1) whether
10 DEFENDANTS understated hours worked and failed to pay all amounts due to
11 PLAINTIFF and the Class Members for wages earned, including minimum and
12 overtime wages, under California law; (2) whether DEFENDANTS provided
13 PLAINTIFF and the Class Members with all meal periods or premium payments
14 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
15 provided PLAINTIFF and the Class Members with all rest periods or premium
16 payments in lieu thereof, in compliance with California law; (4) whether
17 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
18 itemized wage statements in compliance with California law, displaying,
19 including but not limited to, the total hours worked during the pay period; (5)
20 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
21 wages due upon separation of employment; (6) whether DEFENDANTS failed
22 to reimburse PLAINTIFF and the Class Members for all business expenses; and
23 (7) whether DEFENDANTS violated California Business and Professions Code
24 sections 17200, *et seq.*

25 c. Ascertainable Class. The proposed Class is ascertainable as members can be

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

1 identified and located using information in DEFENDANTS' business, payroll
2 and personnel records.

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

10 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
11 Class Members. PLAINTIFF has no interests adverse to the interests of the other
12 Class Members. Counsel who represent PLAINTIFF are competent and
13 experienced in litigating similar class action cases and are California lawyers in
14 good standing. Counsel for PLAINTIFF have the experience and resources to
15 vigorously prosecute this case.

16 f. Superiority. A class action is superior to other available means for the fair and
17 efficient adjudication of this controversy since individual joinder of all members
18 of the class is impractical. Class action treatment will permit a large number of
19 similarly situated persons to prosecute their common claims in a single forum
20 simultaneously, efficiently, and without the unnecessary duplication of effort
21 and expense that numerous individual actions would engender. Furthermore, as
22 the damages suffered by each individual member of the Class may be relatively
23 small, the expenses and burden of individual litigation would make it difficult
24 or impossible for individual members of the Class to redress the wrongs done to
25 them, while an important public interest will be served by addressing the matter
26 as a class action. The cost to the court system of adjudication of such
27 individualized litigation would be substantial. Individualized litigation would
28 also present the potential for inconsistent or contradictory judgments. Finally,

1 the alternative of filing a claim with the California Labor Commissioner is not
2 superior, given the lack of discovery in such proceedings, the fact that there are
3 fewer available remedies, and the losing party has the right to a trial de novo in
4 the Superior Court.

5 **FACTUAL AND LEGAL ALLEGATIONS**

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

10 16. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
11 PLAINTIFF worked for DEFENDANTS as a janitor or cleaning technician in Los Angeles County
12 from in or around 2012 through approximately March 2021. PLAINTIFF continued to be subject to
13 DEFENDANTS' violations of one or more labor code provisions in 2022 as explained below.
14 PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days per week.

15 17. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
16 hourly basis for time counted by DEFENDANTS as hours worked. PLAINTIFF was required by
17 DEFENDANTS to work through rest breaks to complete her workload on time and was often forced
18 to take late meal breaks or work through unpaid meal breaks. DEFENDANTS did not pay
19 PLAINTIFF premium wages for missed, late, on-duty or interrupted meal or rest breaks.
20 DEFENDANTS required PLAINTIFF to fill out time records according to scheduled hours and
21 would not permit PLAINTIFF to record her actual hours worked, which often exceeded her
22 scheduled hours. As a result, PLAINTIFF was not paid for all time worked at minimum or overtime
23 rates and was not paid premium pay for missed, late, on-duty, or interrupted meal and rest breaks.
24 PLAINTIFF was also required to use her personal cellphone to communicate with DEFENDANTS
25 for work related text messages, phone calls, and emails and was not reimbursed for the business use
26 of her personal cellphone. PLAINTIFF was also occasionally required to drive from one location to
27 another to complete her work duties, but was not reimbursed for gas or mileage for the business use
28 of her personal vehicle.

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

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

14 20. Based on information and belief, Class Members and Aggrieved Employees were
15 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
16 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
17 the clock work policies and/or practices.

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

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

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

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

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

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

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

20 27. **Meal Period Violations.** PLAINTIFF, Class Members and Aggrieved Employees
21 consistently worked shifts of at least five and one-half hours or more, entitling them to at least one
22 meal period. However, PLAINTIFF, Class Members and Aggrieved Employees would not receive
23 legally compliant thirty (30) minute first and second meal periods. Based on information and belief,
24 Class Members and Aggrieved Employees were consistently unable to take timely, off duty, thirty-
25 minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal
26 periods, and/or work through part or all their meal periods due to understaffing, the nature and
27 constraints of their job duties and/or commentary from supervisors pressuring them to take non-
28 compliant meal periods or skip meal periods completely. For example, PLAINTIFF was regularly

1 forced to take late, short, or interrupted meal periods, but was required to notate a 30 minute meal
2 period on her time sheet/clock out for thirty minutes irrespective of whether or not a lawful 30-
3 minute meal period was provided, resulting in meal period violations as well as unpaid wages and
4 record-keeping violations.

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

10 29. Based on information and belief, DEFENDANTS implemented policies and/or
11 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
12 DEFENDANTS' control during unpaid meal periods.

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

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

24 32. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
25 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
26 compliant thirty (30) minute second meal period.

27 33. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
28 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal

1 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
2 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

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

1 39. Based on information and belief, DEFENDANTS did not have a have a compliant
2 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
3 practice.

4 40. Based on information and belief, Class Members' and Aggrieved Employees' rest
5 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
6 understaffing, the nature and constraints of their job duties, and/or due to commentary from
7 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
8 compliant rest periods.

9 41. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
10 lasting longer than ten hours.

11 42. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
13 all duties and DEFENDANTS' control during rest periods.

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

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

24 45. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
25 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
26 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
27 PLAINTIFF, Class Members, and Aggrieved Employees with meal and rest periods that complied
28 with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and Class

1 Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross wages
2 earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect during
3 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

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

20 49. Based on information and belief, wage statements issued by DEFENDANTS failed
21 to list all applicable hourly rates in effect during the pay period and the corresponding number of
22 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

23 50. As a result, DEFENDANTS issued wage statements that were not accurate and did
24 not include all of the statutorily required information. As such, DEFENDANTS violated Labor Code
25 section 226.

26 51. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
28 Employees all wages that were due and owing upon termination or resignation. Based on

1 information and belief, DEFENDANTS untimely provide final wages to Class Members without
2 regard to the timing requirements of Labor Code sections 201-202.

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

9 53. These violations subject DEFENDANTS to civil penalties under Labor Code section
10 203, 210, and/or 256.

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

17 55. Based on information and belief, DEFENDANTS shifted the costs of doing business
18 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
19 including but not limited to, the use of Class Members' and Aggrieved Employees' personal mobile
20 phone and data usage for work related purposes to receive and respond to work related messages
21 and/or phone calls.

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

27 57. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
28 full reimbursement for all reasonable expenses associated with carrying out their duties required

1 that Class Members and Aggrieved Employees to subsidize and/or carry the burden of business
2 expenses in violation of Labor Code section 2802.

3 58. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
4 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
5 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

6 **FIRST CAUSE OF ACTION**

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

9 59. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 60. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
11 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
12 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
13 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
14 period is unlawful.

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

22 62. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
23 Class Members for all hours worked.

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

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

SECOND CAUSE OF ACTION

Recovery of Unpaid Overtime Wages

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

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

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

68. Based on information and belief, DEFENDANTS failed to pay twice Class Members' 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.

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

1 other Class Members.

2 70. DEFENDANTS' conduct described above is in violation of California Labor Code
3 sections 510 and 1194 and all applicable Wage Orders.

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

6 **THIRD CAUSE OF ACTION**

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

9 72. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 73. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
11 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
12 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
13 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
14 waived, but only under the following circumstances: (1) if an employee's total work period in a day
15 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
16 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
17 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
18 waived by mutual consent of the employer and employee, but only if the first meal period was not
19 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
20 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
21 done so.

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

26 75. As explained above, PLAINTIFF and other Class Members were consistently unable
27 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
28 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary

1 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
2 completely.

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

7 77. Moreover, based on information and belief, Class Members did not receive a timely,
8 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

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

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

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

22 **FOURTH CAUSE OF ACTION**

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

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

25 82. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
26 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
27 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
28 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the

1 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
2 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
3 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
4 The rest period requirement obligates employers to permit and authorize employees to take off-duty
5 rest periods, meaning employers must relieve employees of all duties and relinquish control over
6 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

7 83. If the employer fails to provide any required rest period, the employer must pay the
8 employee one hour of pay at the employee's regular rate of compensation for each workday the
9 employer did not provide at least one legally required rest period, pursuant to Labor Code section
10 226.7.

11 84. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
12 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
13 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
14 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
15 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
16 skip rest periods completely or otherwise take non-compliant rest periods.

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

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

24 87. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
25 period premium to PLAINTIFF and other Class Members for each workday in which there was a
26 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
27 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
28 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the

1 regular rate of compensation for purposes of determining the owed rest period premium.

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

7 **FIFTH CAUSE OF ACTION**

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

9 89. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

13 (1) gross wages earned, (2) total hours worked by the employee,
14 except for any employee whose compensation is solely based on a
15 salary and who is exempt from payment of overtime under
16 subdivision (a) of Section 515 or any applicable order of the Industrial
17 Welfare Commission, (3) the number of piece-rate units earned and
18 any applicable piece rate if the employee is paid on a piece-rate basis,
19 (4) all deductions, provided that all deductions made on written orders
20 of the employee may be aggregated and shown as one item, (5) net
21 wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (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.

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

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

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

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

20 94. Separately, and independent from the above allegations, DEFENDANTS issued
21 wage statements to PLAINTIFF and Class Members that violate Labor Code 226(a)(8), by failing
22 to list the correct name and/or address of the legal entity that is the employer.

23 95. Based on information and belief, wage statements issued by DEFENDANTS failed
24 to list the inclusive dates of the pay period for which the Class Member is being paid.

25 96. DEFENDANTS' failure to accurately list all hours worked on all wage statements
26 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
27 Members over whether they received all wages owed to them.

28 97. As a result, PLAINTIFF and other Class Members have suffered injury as they could

1 not easily determine whether they received all wages owed to them and whether they were paid for
2 all hours worked.

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

6 99. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
7 Class Members with accurate, itemized wage statements.

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

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

21 102. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
22 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
23 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
24 provide currently employed Class Members with inaccurate wage statements in violation of
25 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
26 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
27 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
28 with California Labor Code § 226(a).

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

4 **SIXTH CAUSE OF ACTION**

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

7 104. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

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

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

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

24 **SEVENTH CAUSE OF ACTION**

25 **Failure to Reimburse Business Expenses**
26 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

27 109. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 110. 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

1 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
2 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
3 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
4 incurred by the employee enforcing the rights granted by this section.”

5 111. Among other things, under California law, when employees must use their personal
6 cellphones for work-related purposes, the employer must reimburse them for a reasonable
7 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
8 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
9 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
10 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
11 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
12 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

13 112. As described above, PLAINTIFF and the Class Members were improperly required
14 to pay for business expenses that are legally the responsibility of the employer. Based on information
15 and belief, Class Members were also not reimbursed for personal protective equipment, such as face
16 masks, hand sanitizer, and COVID-19 tests.

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

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

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

27 **EIGHTH CAUSE OF ACTION**
Unfair Competition

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

1 116. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

16 118. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
17 California Labor Code, DEFENDANTS have gained a competitive advantage over other
18 comparable companies doing business in the State of California that comply with their obligations
19 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
20 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
21 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
22 minimum and overtime wages and to pay all wages due upon separation of employment of their
23 employees.

24 119. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
25 and Class Members have suffered injury in fact and lost money or property, as described in more
26 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
27 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
28 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their

1 unlawful and unfair business practices.

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

5 121. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
6 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
7 by law.

8 **NINTH CAUSE OF ACTION**

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

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

11 122. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

12 123. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
13 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State of
14 California and Aggrieved Employees, regarding violations of the California Labor Code as set forth
15 herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

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

20 124. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
21 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
22 limitations period and suffered one or more of the Labor Code violations set forth herein.
23 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
24 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
25 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
26 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
27 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
28 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

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

2 125. On November 22, 2022, PLAINTIFF, through counsel, gave written notice by online
3 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
4 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
5 in this Complaint ("PAGA Notice").

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

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

14 128. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
15 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
16 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
17 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
18 applicable Wage Orders.

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

25 130. Additionally, DEFENDANTS have violated the following Labor Code sections and
26 provisions of the applicable Wage Order as to the Aggrieved Employees.

27 **Record Keeping Violations**

28 131. California Labor Code § 1174 requires employers to keep "accurate and complete"

1 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
2 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
3 times during which all owed meal periods were provided each day.

4 132. Due to DEFENDANTS' automatic meal break deductions, failure to relieve
5 employees of all duties and employer control during meal periods, time rounding and/or payment
6 according to scheduled hours rather than actual hours worked, and other off-the-clock work policies
7 and practices described above, DEFENDANTS failed, and continue to fail, to keep accurate and
8 complete records as required by law, including but not limited to the following records: total daily
9 hours worked, applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved
10 Employees began and ended each work period, time records of meal periods, shift start times and
11 end times, and accurate itemized wage statements.

12 133. DEFENDANTS' failure to keep "accurate and complete" payroll records for
13 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
14 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
15 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
16 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
17 period during which the referenced statutes and Wage Order provisions were violated.²

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

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).

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

10 136. Personnel Records. In addition to their right to time and pay records, employees, and
11 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
12 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
13 section 432 further specifies that employers must furnish copies of all employment records bearing
14 the employee’s signature.

15 137. Labor Code section 1198.5 also requires that the file be made available for inspection
16 or receipt within a “reasonable” amount of time, but “not later than 30 calendar days from the date
17 the employer receives a written request.” An employer’s failure to comply within this timeframe
18 likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty
19 from the employer. Lab. Code section 1198.5(k).

20 138. Based on information and belief, DEFENDANTS fail to timely produce or make
21 available a current or former employee’s personnel records and/or payroll records when requested
22 pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example,
23 on June 21, 2022, PLAINTIFF, through her counsel, sent a written request for time, pay and
24 personnel records to DEFENDANTS. After DEFENDANTS failed to respond within the statutory
25 periods, PLAINTIFF, through counsel, sent a second written request on July 28, 2022. Yet,
26 DEFENDANTS failed to produce any records at all within the time periods delineated by California
27 labor law. Based on information and belief, DEFENDANTS failed and continue to fail to timely
28 produce complete time, pay, and personnel records when requested by other Aggrieved

1 EMPLOYEES. Based on information and belief, EMPLOYER failed and continues to fail to timely
2 produce complete payroll and personnel records when requested by other Aggrieved Employees.

3 139. These violations subject DEFENDANTS to penalties under Labor Code sections
4 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for
5 each Aggrieved Employee, results in a separate civil penalty.

6 **Standard Conditions of Labor Violations**

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

14 **Refusal to Make Payment**

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

23 **Statutory Wage Violations**

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

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 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 **Sick Leave Violations**

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

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

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

27 146. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
28 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all

1 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
2 were entitled to the maximum number of hours accruable.

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

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

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

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

14 **Failure To Provide Supplemental Paid Sick Leave.**

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

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

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

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

6 **Unlawful Inquiries into Salary History**

7 154. Labor Code section 432.3 provides in part “(b) An employer shall not, orally or in
8 writing, personally or through an agent, seek salary history information, including compensation
9 and benefits, about an applicant for employment.” Based on information and belief, DEFENDANTS
10 have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal their salary
11 history when applying for employment with DEFENDANTS. For example, when PLAINTIFF
12 applied for employment with DEFENDANTS, PLAINTIFF was required to fill out a job application
13 that requested, among other things, the following information: Name and address of former
14 employer, length of former employment relationship, and the “salary” of the former employment
15 relationship. Based on information and belief, DEFENDANTS required other Aggrieved Employees
16 to disclose the same or similar information, in violation of Labor Code section 432.3.

17 155. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
18 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
19 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
20 obtaining employment with DEFENDANTS, in violation of California law.

21 **Unlawful Agreements/ Unlawful Criminal History Inquiries:**

22 **Unlawful Agreements**

23 156. Labor code section 432.5 provides that “no employer...shall require any employee
24 or applicant for employment to agree, in writing, to any term or condition which is known by such
25 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
26 PLAINTIFF, and other Aggrieved Employees to agree in writing to unlawful conditions of
27 employment including but not limited to unlawful criminal and/or financial checks as a condition
28 of obtaining and/or continuing employment in violation of labor code section 432.5.

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

13 158. Based on information and belief, DEFENDANTS ordered unlawful financial credit
14 checks on Aggrieved Employees, in violation of labor code section 1024.5, and required aggrieved
15 employees to provide ongoing written consent to the unlawful credit checks as a condition of
16 employment, in violation of California and Federal law, which results in a further violation of labor
17 code section 432.5.

18 159. Based on information and belief, DEFENDANTS also required Aggrieved
19 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
20 a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

21 160. Based on information and belief, DEFENDANTS required Aggrieved Employees to
22 agree in writing to a background check which failed to abide by the requirements set forth in Cal
23 civil code section 1786, *et seq.*, and 15 U.S.C. Section 1681, *et seq.*, including but not limited to by
24 failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all),
25 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
26 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
27 failing to provide a way by which the individual could request a copy of the report, failing to disclose
28 the name, address, and telephone number of the third party preparing the report, and failing to

1 properly obtain authorization or consent to such a background check, and thus was an unlawful
2 background check.

3 161. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
4 financial checks not in conformance with the applicable laws, DEFENDANTS violated labor code
5 section 432.5.

6 162. Based on information and belief, DEFENDANTS also required Aggrieved
7 Employees to agree in writing to provide ongoing consent to defendants to conduct background
8 checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or
9 other applicable laws, resulting in a further violation of labor code section 432.5, by requiring
10 applicants and employees to agree to an unlawful provision as a condition of employment.

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

14 164. By requiring Aggrieved Employees agree in writing to unlawful provisions as a
15 condition of employment, DEFENDANTS violated labor code section 432.5.

16 Unlawful inquiries into criminal history

17 165. Labor code section 432.7 prohibits an employer from asking applicants about past
18 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
19 information and belief, defendants asked aggrieved employees about arrests not resulting in
20 convictions on its employment application, in violation of California law.

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

26 167. By asking about arrests not resulting in convictions, DEFENDANTS violated labor
27 code section 432.7. By asking about convictions at the application phase or prior to extending an
28 employment offer, employer violated California’s Fair Chance Act, and thereby violated labor code

1 section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to disclose arrests
2 and/or convictions as a condition of employment.

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

5 169. Under the provisions of PAGA and the following Labor Code sections, including but
6 not limited to, Labor Code sections, 201-203, 210, 216, 221-223, 226, 226.7, 227.3, 245-248.6,
7 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199,
8 2699, 2699.3, 2802, 2810.5, and all relevant sections of the applicable Wage Orders, as well as all
9 interpretations of these laws by California Courts and administrative bodies, as well as any other
10 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

22 **PRAYER FOR RELIEF**

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

- 25 1. For an order that the action be certified as a class action;
- 26 2. For an order that PLAINTIFF be appointed as class representative;
- 27 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 28 4. For compensatory damages according to proof;

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

13
14 Dated: April 28, 2023

CROSNER LEGAL, PC

15
16 By: 
17 Zachary M. Crosner, Esq.
18 Jamie Serb, Esq.
19 Chad Saunders, Esq.
Attorneys for Plaintiff

20 **DEMAND FOR JURY TRIAL**

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

22
23 Dated: April 28, 2023

CROSNER LEGAL, PC

24
25 By: 
26 Zachary M. Crosner, Esq.
27 Jamie Serb, Esq.
28 Chad Saunders, Esq.
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Superior Court County of Los Angeles Case No. 22STCV35169

On April 28, 2023, I served true copies of the following document(s) described as

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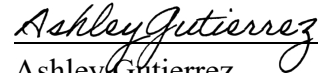
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1 I declare under penalty of perjury under the laws of the United States of America that the foregoing
2 is true and correct and that I am employed in the office of a member of the bar of this Court at
3 whose direction the service was made.

4 Executed on April 28, 2023, at Los Angeles, California.

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6 Ashley Gutierrez

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SERVICE LIST

Rosa Alvarez v. Briteworks Inc.
Superior Court County of Los Angeles Case No. 22STCV35169

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