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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SUTTER**

11
12 DAVID JOSEPHSON, on behalf of the
13 State of California, the Labor Workforce
14 Development Agency, as a private attorney
general, and on behalf of all aggrieved
employees,

15 Plaintiff,

16
17 v.

18 LAMON CONSTRUCTION COMPANY,
19 INC., a California Corporation; and DOES
20 1-100, inclusive,

21 Defendants.
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JAN 18, 2023
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By: Harminder Dosanjh, Deputy

CVCS23-0000075

Case No.:

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

1 Plaintiff DAVID JOSEPHSON (“PLAINTIFF”), on behalf of the State of California, the
2 Labor Workforce Development Agency, as a private attorney general, and on behalf of all
3 Aggrieved Employees (defined below), hereby files this Complaint against Defendants LAMON
4 CONSTRUCTION COMPANY, INC., a California Corporation; and DOES 1-100, inclusive,
5 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
6 thereon alleges as follows:

7 **INTRODUCTION**

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

13 2. The California Labor and Workforce Development Agency (“LWDA”) is a
14 California governmental entity. PLAINTIFF has been delegated authority to sue on behalf of the
15 LWDA pursuant to PAGA.

16 **JURISDICTION AND VENUE**

17 3. This Court has jurisdiction over PLAINTIFF’s representative claims for penalties on
18 behalf of Aggrieved Employees and the State of California pursuant to California statutes, including
19 but not limited to the PAGA, and decisional law and regulations.

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

26 **THE PARTIES**

27 5. PLAINTIFF, is, and at all relevant times, was an individual domiciled in the State of
28 California and a citizen of the State of California.

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

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

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

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

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

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

1 the wage rates of PLAINTIFF and Aggrieved Employees.

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

7 18. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
8 control over, applied the same policies and practices, and engaged in the same acts and omissions
9 with regard to the other Aggrieved Employees.

10 **PAGA ALLEGATIONS**

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

14 All individuals who currently work or formerly worked for any of the DEFENDANTS at
15 any facility/location owned, operated and/or managed by any of the DEFENDANTS in
16 California at any time from one year plus 65 days from the filing of the initial Complaint
17 through the present ("PAGA Period").

18 20. PLAINTIFF and other individuals that currently work or formerly worked for
19 DEFENDANTS are each an "aggrieved employee," as that term is defined under Labor Code section
20 2699(c), as they were each employed by DEFENDANTS during the applicable statutory limitations
21 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
22 PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved Employees, the
23 civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

24 21. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and
25 all Aggrieved Employees, as he was jointly employed by DEFENDANTS and is thereby affected
26 by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018)
27 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
28 committed by the employer – regardless of whether Plaintiff experienced all violations personally.

1 *Id.* at 760-761.

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

3 22. On November 10, 2022, PLAINTIFF, through counsel, gave written notice by online
4 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
5 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
6 in this Complaint (“PAGA Notice”). The LWDA assigned PLAINTIFF the following case number:
7 LWDA-CM-919040-22. PLAINTIFF’s PAGA Notice, a true and correct copy of which is attached
8 hereto as **Exhibit 1**, was also sent to DEFENDANTS via certified mail.

9 23. PLAINTIFF’s PAGA Notice outlined DEFENDANTS’ violations of the California
10 Labor Code and the applicable wage orders on behalf of the State of California and other Aggrieved
11 Employees.

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

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

20 **FACTUAL ALLEGATIONS**

21 26. During the PAGA Period, PLAINTIFF and other Aggrieved Employees were
22 employed by DEFENDANTS in the State of California. At all relevant times referenced herein,
23 DEFENDANTS exercised control over PLAINTIFF and the other Aggrieved Employees and
24 suffered and/or permitted them to work.

25 27. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
26 PLAINTIFF worked for DEFENDANTS as a construction worker and/or similar title from in or
27 around July 2019 through the separation of his employment, on or about February 4, 2022. Most of
28 PLAINTIFF’s work for DEFENDANTS was performed in Sutter County. PLAINTIFF worked for

1 DEFENDANTS out of DEFENDANTS' locations including but not limited to, DEFENDANTS'
2 facility located on Von Geldern Way, in Yuba City, California. PLAINTIFF regularly worked at
3 least eight (8) hours per day, at least five (5) days per week. Occasionally, PLAINTIFF had shifts
4 as long as 13 hours per day. During most of his employment with DEFENDANTS, PLAINTIFF
5 worked on a paving crew consisting of at least ten (10) other construction workers. At all relevant
6 times, PLAINTIFF was a non-exempt employee that was paid on an hourly basis for time counted
7 by DEFENDANTS as hours worked.

8 28. PLAINTIFF consistently worked without being provided a first or second meal
9 period. For example, on August 24, 2021, PLAINTIFF worked at least 9 hours, but was not provided
10 with a first meal period. On August 25, 2021, PLAINTIFF worked at least 8 hours and was not
11 provided with a first meal period. On August 26, 2021, PLAINTIFF worked at least 12 hours and
12 was not provided with a first or second meal period. On August 27, 2021, PLAINTIFF worked at
13 least 12.5 hours and was not provided with a first or second meal period. PLAINTIFF was also not
14 authorized or permitted to take rest breaks at any time, including, for example, during the August
15 23, 2021 through August 27, 2021 workweek. PLAINTIFF was not paid premium wages for
16 unprovided meal or rest periods at any time, including during for the August 23, 2021 through
17 August 27, 2021 workweek. Based on information and belief, DEFENDANTS automatically
18 deducted thirty minutes of wages from PLAINTIFF's pay per shift for a meal period PLAINTIFF
19 did not receive between August 23, 2021 and August 27, 2021. This time was compensable work
20 time that was owed to PLAINTIFF as hours worked.

21 29. On October 11, 2021, PLAINTIFF worked at least 10.5 hours, but was not provided
22 with a first or second meal period. On October 12, 2021, PLAINTIFF worked at least 9 hours, but
23 was not provided with a first meal period. On October 14 and 15, 2021, PLAINTIFF worked at least
24 8.5 hours each day, but was not provided with a first meal period. PLAINTIFF was not paid meal
25 period premiums for these unprovided meal periods. PLAINTIFF was also not authorized or
26 permitted to take rest breaks at any time, including, for example, during the October 11, 2021
27 through October 15, 2021 workweek. PLAINTIFF was not paid premium wages for unprovided
28 meal or rest periods at any time, including during the October 11, 2021 through October 15, 2021

workweek. Based on information and belief, DEFENDANTS automatically deducted thirty minutes of wages from PLAINTIFF's pay per shift for a meal period PLAINTIFF did not receive between October 11, 2021 and October 15, 2021. This time was compensable work time that was owed to PLAINTIFF as hours worked.

30. Similarly, PLAINTIFF worked during the November 28, 2021 to December 4, 2021 pay period and was not provided with first or second meal break. PLAINTIFF was also not authorized or permitted to take rest breaks at any time, including for example, during the November 28, 2021 to December 4, 2021 workweek. PLAINTIFF was not paid premium wages for unprovided meal or rest periods at any time, including during the November 28, 2021 to December 4, 2021 workweek. Based on information and belief, DEFENDANTS automatically deducted thirty minutes of wages from PLAINTIFF's pay per shift for a meal period PLAINTIFF did not receive between November 28, 2021 and December 4, 2021. This time was compensable work time that was owed to PLAINTIFF as hours worked.

31. Furthermore, PLAINTIFF's wage statements failed to comply with Labor Code section 226, as the wage statements PLAINTIFF received for the August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021 pay periods failed to list the correct total hours worked (failing to include time spent working during automatically deducted meal breaks and other off-the-clock work), failed to include the correct gross and net wages earned, and failed to include meal and rest period premium pay.

32. PLAINTIFF was not reimbursed for the business use of his cellphone, which was used to communicate with DEFENDANTS, including supervisors, foremen, and other Aggrieved Employees regarding work-related issues. PLAINTIFF was also not reimbursed for the business use of his personal vehicle, including mileage, wear and tear, and gas when he was required to drive between job sites. On information and belief, during the workweeks of August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021, PLAINTIFF was required to use his personal vehicle for business purposes without reimbursement for mileage, wear and tear on the vehicle, or gas. On information and belief, during the workweeks of August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021, PLAINTIFF was required to use his personal cellphone and

1 data plan for business purposes without reimbursement.

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

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

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

19 36. For example, PLAINTIFF was required to perform pre-shift and post-shift off-the-
20 clock work outside of his scheduled shift times, for which DEFENDANTS did not compensate
21 PLAINTIFF, resulting in the underpayment of wages owed to PLAINTIFF. For instance,
22 PLAINTIFF was required to be at the construction job site by his scheduled shift start time.
23 However, DEFENDANTS required PLAINTIFF to first drive to DEFENDANTS' yard/facility
24 located on Von Geldern to retrieve equipment, such as but not limited to, water shovels, rakes, water
25 meters, rollers, small excavators and/or other items/equipment, load and/or prepare the trailer and/or
26 truck and/or complete other work tasks prior to traveling to the assigned construction site. Similarly,
27 PLAINTIFF was required to return to DEFENDANTS' facility on Von Geldern Way after his
28 scheduled shift ended to return and/or unload equipment, the trailer and/or truck and/or perform

1 other work tasks off-the-clock, resulting in the underpayment of wages owed to PLAINTIFF.
2 PLAINTIFF estimates these pre-shift and post-shift off-the-clock work tasks he was required to
3 perform resulted in an average of at least an hour of off-the-clock work each shift he worked for
4 which DEFENDANTS failed to compensate PLAINTIFF, resulting in the significant underpayment
5 of wages owed to PLAINTIFF.

6 37. Based on information and belief, Aggrieved Employees were also pressured to
7 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
8 expectations. For example, based on information and belief, Aggrieved Employees were also
9 required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls
10 and/or messages they received to their personal phones and were required to respond to, including
11 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
12 resulting in the underpayment of wages owed to Aggrieved Employees. For example, PLAINTIFF
13 estimates he received work-related phone calls and/or messages to his personal cell phone from his
14 foremen/supervisor and/or other Aggrieved Employees outside of his scheduled shift times at least
15 a couple times per week. This time PLAINTIFF was required to spend responding to work-related
16 phone calls and/or messages outside of his scheduled shift times was not compensated, resulting in
17 the underpayment of wages owed to PLAINTIFF.

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

23 39. Based on further information and belief, DEFENDANTS implemented a time-
24 rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved
25 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. For example, DEFENDANTS' time records for PLAINTIFF and wage statements issued to
28 PLAINTIFF show DEFENDANTS rounded PLAINTIFF's hours worked to at least the nearest half

1 hour. For instance, DEFENDANTS’ time records for PLAINTIFF beginning on 11/28/21 through
2 12/4/21 show a consistent shift start or “in” time of precisely 7:00 a.m. for each shift worked from
3 11/28/21 through 12/4/21 and a shift end/ “out” time that is rounded to the nearest half hour. For
4 example, from 11/28/21 through 12/4/21, PLAINTIFF’s shift end times are rounded to nearest
5 quarter hour and recorded as included but not limited to 3:30 p.m., 4:30 p.m, or 6:30 p.m. Likewise,
6 DEFENDANTS’ time records for PLAINTIFF for the subsequent week (i.e. beginning on 12/5/21
7 and ending on 12/11/21) evidence that each recorded time entry is rounded to the nearest half hour.
8 DEFENDANTS’ failure to pay for all time worked by virtue of its time-rounding practices resulted
9 in the underpayment of minimum wages owed to PLAINTIFF and Aggrieved Employees as well as
10 unpaid overtime wages for those Aggrieved Employees who worked more than eight (8) hours in a
11 day and/or more than forty (40) hours in a week.

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

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

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

27 43. Based on information and belief, DEFENDANTS sometimes paid PLAINTIFF and
28 other Aggrieved Employees multiple rates of base pay in one workweek but failed to incorporate all

1 multiple rates of base pay into the regular rate of pay for purposes of calculating the owed overtime
2 rate. For example, at times, PLAINTIFF earned multiple base pay rates during the same workweek,
3 yet, DEFENDANTS failed to incorporate all/both base pay rates into the regular rate of pay for
4 purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment
5 of overtime wages owed to PLAINTIFF. Based on information and belief, DEFENDANTS
6 similarly failed to incorporate multiple base rates of pay earned in a workweek by other Aggrieved
7 Employees into the regular rate of pay used to calculate the owed overtime rate(s), resulting in
8 unpaid wages to Aggrieved Employees.

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

14 45. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
15 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
16 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
17 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
18 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
19 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
20 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
21 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
22 completely. For example, PLAINTIFF estimates he was required to work through part or all of his
23 owed first meal period most if not all shifts he worked.

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

1 47. Based on information and belief, DEFENDANTS implemented policies and/or
2 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
3 during unpaid meal periods. For example, PLAINTIFF was prohibited from leaving the worksite
4 during his shifts, including during any purported meal periods. Also, at all times during his shifts,
5 including but not limited to, during any purported meal periods, PLAINTIFF was required to
6 monitor his personal cell phone for work-related communications from his foremen/supervisors
7 and/or other Aggrieved Employees.

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

12 49. Based on information and belief, despite DEFENDANTS' failure to provide lawful
13 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
14 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
15 deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite
16 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did
17 not receive lawful meal periods.

18 50. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
19 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)
20 minute second meal period. For example, when PLAINTIFF worked more than ten hours in a shift,
21 he was not provided with any form of a second meal period. For instance, on 11/24/21, PLAINTIFF
22 worked at least eleven (11) hours and was not provided with a second meal period; on 12/2/21 and
23 12/3/21, PLAINTIFF worked at least 11.5 hours and was not provided with a second meal period;
24 on 1/21/22 and 1/22/22, PLAINTIFF worked at least eleven (11) hours and was not provided with
25 a second meal period.

26 51. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
27 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
28 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor

1 did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

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

28 57. Based on information and belief, DEFENDANTS did not have a have a compliant

1 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
2 practice. .

3 58. For example, PLAINTIFF was not informed, authorized, instructed about nor
4 permitted an opportunity to take off-duty rest periods for every four hours worked or major fraction
5 thereof. Any rest periods were taken once tasks were completed and/or as time permitted.
6 PLAINTIFF estimates he had to work through his owed rest periods most if not all shifts he worked
7 for DEFENDANTS. Based on information and belief, Aggrieved Employees' rest periods were
8 interrupted, cut short, on duty, restricted to work premises and/or late due to understaffing, the nature
9 and constraints of their job duties, and/or due to commentary from supervisors/managers pressuring
10 them to skip rest periods completely or otherwise take non-compliant rest periods.

11 59. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
12 lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer than ten
13 hours, he was not provided with any version of a third rest period. For instance, PLAINTIFF worked
14 shifts lasting longer than ten hours on including but not limited to, 11/24/21. 12/2/21, 12/3/21,
15 1/21/22 and 1/22/22 and was not provided with any version of a third rest period during those shifts.

16 60. Based on information and belief, DEFENDANTS implemented policies and/or
17 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
18 DEFENDANTS' control during rest periods. For example, PLAINTIFF was required to monitor
19 and respond to work-related communications on his personal cell phone at all times during his shifts,
20 including but not limited to, during any purported rest periods. PLAINTIFF was also required to
21 remain on the worksite during any purported rest periods.

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

25 62. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
26 which PLAINTIFF and Aggrieved Employees experienced a missed/unlawful rest period in
27 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
28 workday a proper rest period was not provided and/or failed to pay the proper rest period premium

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

5 **63. Failure to Provide Cooldown Recovery Periods:** California Code of Regulations,
6 Title 8, section 3395 mandates that all employers with “outdoor places of employment” implement
7 a heat illness prevention program that includes, among other requirements, providing workers “cool-
8 down” periods of at least five minutes in the shade. Specifically, section 3395 provides that
9 “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
10 no less than five minutes at a time when they feel the need to do so to protect themselves from
11 overheating” and that “such access to shade shall be permitted at all times.” Pursuant to Labor Code
12 section 226.7(b), an employer is prohibited from requiring an employee to work during a recovery
13 period mandated by an applicable statute, or applicable regulation, standard, or order of the
14 Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the
15 Division of Occupational Safety and Health.

16 **64.** Pursuant to Section 15 of IWC Wage Orders applicable to Aggrieved Employees,
17 the temperature maintained in each work area “shall provide reasonable comfort consistent with
18 industry-wide standards for the nature of the process and the work performed.”

19 **65.** DEFENDANTS were required to authorize and permit Aggrieved Employees to take
20 recovery periods, due to, including but not limited to, the intense heat conditions in the work area
21 and consistent with industry-wide standards for the type of labor Aggrieved Employees were
22 required to perform.

23 **66.** DEFENDANTS failed to authorize or permit Aggrieved Employees to take recovery
24 periods as required by California law. Based on information and belief, DEFENDANTS suffered
25 and permitted Aggrieved Employees to work under intense heat conditions without allowing
26 Aggrieved Employees to take recovery periods as needed to prevent heat-related illness.
27 PLAINTIFF and Aggrieved Employees were required to spend multiple hours at a time outdoors in
28 significantly high temperature heat conditions. DEFENDANTS failed to provide proper heat illness

1 prevention training and/or heat illness policies/practices/programs as required by California’s Heat
2 Illness Prevention statute, Title 8 Section 3395(d). DEFENDANTS failed to provide adequate
3 access to drinking water as required by California’s Heat Illness Prevention statute, Title 8 Section
4 3395(c). Moreover, DEFENDANTS maintained a policy and practice of not permitting necessary
5 time for cooldown recovery breaks, and as a result, Aggrieved Employees were required to remain
6 outdoors with little to no access to shade for extended periods of time. In addition, DEFENDANTS,
7 failed to pay Aggrieved Employees with an additional hour of pay at their regular rate(s) of pay for
8 each missed cooldown recovery period.

9 67. Based on information and belief, DEFENDANTS did not have a policy or practice
10 in place that authorized or permitted Aggrieved Employees to take recovery periods when suffering
11 from heat-related illness despite creating working conditions that exposed Aggrieved Employees to
12 extreme heat conditions. Aggrieved Employees were unable to take proper recovery periods due to,
13 including but not limited to, lack of relief workers available/scheduling issues, and/or having to
14 complete work tasks.

15 68. DEFENDANTS did not pay Aggrieved Employees one additional hour of pay at their
16 respective regular pay rate(s) for each workday a recovery period was not provided as required by
17 law, in violation of California Labor Code section 226.7 and all applicable IWC Wage Orders. Each
18 violation of each Labor Code section and IWC Wage Order provision, for each Aggrieved
19 Employee, results in a separate civil penalty.

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

28 70. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees

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

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

14 72. Based on information and belief, wage statements issued by DEFENDANTS failed
15 to list all applicable hourly rates in effect during the pay period and the corresponding number of
16 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
17 For example, based on information and belief, DEFENDANTS' wage statements issued to
18 PLAINTIFF and other Aggrieved Employees do not provide an accurate overtime rate because
19 instead of multiplying the regular rate of pay by one and one-half, the wage statements provide at
20 least two separate overtime rate categories with each providing an inaccurate overtime rate based
21 on each base rate of pay as opposed to the regular rate of pay. As such, PLAINTIFF and other
22 Aggrieved Employees are forced to perform extensive calculation using outside resources to
23 determine what their pay rate was for each corresponding hour worked. See, e.g., McKenzie v.
24 Fedex, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein, DEFENDANTS also failed to
25 incorporate all forms of non-discretionary compensation earned during the pay period, including but
26 not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or other non-
27 discretionary compensation and/or multiple base rates of pay into the overtime pay rate calculation,
28 and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by

1 PLAINTIFF and other Aggrieved Employees.

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

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

8 75. **Failure to Produce Employment Records.** Based on information and belief,
9 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
10 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
11 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
12 counsel, sent DEFENDANTS multiple written requests for time, pay and personnel records
13 including but not limited to a written request for payroll and personnel records mailed to
14 DEFENDANTS on or around March 17, 2022, and another written request mailed on or around
15 April 25, 2022. Yet, DEFENDANTS failed to produce any records at all within the time periods
16 delineated by California labor law. Based on information and belief, DEFENDANTS failed and
17 continue to fail to timely produce complete time, pay, and personnel records when requested by
18 other Aggrieved Employees.

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

24 77. Upon separation of employment, Aggrieved Employees' final paychecks were not
25 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
26 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
27 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
28 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly

1 accrued rates. For example, PLAINTIFF's employment separated, on or about February 4, 2022,
2 yet PLAINTIFF was not provided his final paycheck until more than several days after
3 PLAINTIFF's employment ended, and the final paycheck was devoid of all wages owed, including
4 but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all
5 owed sick leave and/or paid time off wages at the properly accrued rates.

6 78. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
7 upon discharge of employment. For example, at times, including but not limited to, during winter
8 2021, PLAINTIFF experienced breaks in his employment caused by DEFENDANTS whereby
9 PLAINTIFF would not be called in for work for longer than a single pay period due to including
10 but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as
11 a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
12 such periods of employment, in violation of including but not limited to Labor Code section 201-
13 202.

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

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

22 81. Based on information and belief, DEFENDANTS shifted the costs of doing business
23 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
24 to, uniforms/work clothing/safety/protective equipment and/or the use of Aggrieved Employees'
25 personal mobile phone and data usage for work-related purposes including but not limited to
26 receiving and responding to work related messages and/or phone calls.

27 82. For example, PLAINTIFF was required to supply his own work boots and at times
28 had to supply his own earplugs and Covid-protection masks DEFENDANTS required yet

1 PLAINTIFF was not reimbursed by DEFENDANTS for the business expenses he incurred in
2 connection therewith. Also, during at least seventy-five percent of PLAINTIFFs shifts, PLAINTIFF
3 received work-related calls and/or messages from his foremen/supervisors, other Aggrieved
4 Employees and also received work-related calls and/or messages outside his scheduled shift times
5 at least a couple times per week without being provided any reimbursement for DEFENDANTS'
6 business use of his personal mobile phone.

7 83. Additionally, Aggrieved Employees were not reimbursed for the business use of their
8 personal vehicles, including mileage, wear and tear, and gas when they were required to drive
9 between job sites. For example, while at times DEFENDANTS purported to provide a company
10 vehicle, PLAINTIFF was regularly required to use his personal vehicle to drive from
11 DEFENDANTS' yard to the construction job site(s) and/or between various job site(s) during the
12 months at a time DEFENDANTS did not provide any company vehicle at all and/or at other times
13 due to the company vehicle being unavailable and/or in use. For example, for the approximately
14 last four (4) months of PLAINTIFF's employment, after arriving at work, PLAINTIFF had to use
15 his personal vehicle to drive from DEFENDANTS' yard to the construction job site and then drive
16 his personal vehicle from the job site back to DEFENDANTS' yard at the end of his shift but was
17 not provided any reimbursement for DEFENDANTS' business use of his personal vehicle.
18 PLAINTIFF was required to use his personal vehicle for business purposes without reimbursement
19 for mileage, wear and tear on the vehicle, or gas.

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

25 85. Based on information and belief, DEFENDANTS regularly failed to reimburse and
26 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
27 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
28 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties

1 assigned by DEFENDANTS.

2 86. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
3 for all reasonable expenses associated with carrying out their duties required that Aggrieved
4 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
5 2802.

6 87. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
7 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
8 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

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

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

23 90. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
24 to provide proper paid sick leave to Aggrieved Employees. DEFENDANTS either failed to provide
25 paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay
26 owed to PLAINTIFF and other Aggrieved Employees by failing to base the accrued sick leave hours
27 on the correct number of hours worked (as a result of the rounding/automatic deduction policies and
28 practices for meal periods and/or shift start and end times/other required off-the-clock work

1 including but not limited to unpaid meal periods) and by failing to incorporate multiple rates of pay
2 and/or all non-discretionary remuneration, including but not limited to, non-discretionary
3 bonuses/incentive pay, shift differential pay multiple base rates of pay and/or other non-
4 discretionary compensation into the sick leave pay rate calculation.

5 91. Upon information and belief, DEFENDANTS further failed to place Aggrieved
6 Employees on notice of their paid sick leave rights – or thereby putting their entitlement to sick
7 leave in a Labor Code section 2810.5 notice. Based on information and belief, DEFENDANTS
8 failed to provide notice of the correct sick leave amount balance available to Aggrieved Employees
9 on their wage statements or other written statement. Moreover, based on information and belief,
10 DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick
11 leave.

12 92. Based on information and belief, throughout the relevant time period,
13 DEFENDANTS failed to provide notice of the balance of sick leave pay left for Aggrieved
14 Employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure,
15 Aggrieved Employees would have used their paid sick leave at least prior to their respective
16 separations, for as on several occasions thereafter, he or she would have been entitled to use the
17 banked sick leave and earn appropriate compensation.

18 93. Upon information and belief, DEFENDANTS failed and continue to fail to comply
19 with Labor Code section 246, by failing to provide Aggrieved Employees with a Labor Code section
20 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid
21 time off leave an employer provides in lieu of sick leave, at the time it pays wages.

22 94. As such, DEFENDANTS have violated California’s paid sick leave laws and
23 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
24 a result of DEFENDANTS’ failure to properly institute a lawful paid sick leave program. These
25 unlawful practices and policies violate Labor Code sections 245-248.5.

26 95. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
27 that all employers with 26 or more employees are required to provide up to 80 hours for covered
28 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care

1 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
2 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
3 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
4 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

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

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

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

5 101. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
6 other Aggrieved Employees with suitable seating, and when such employees were not engaged in
7 duties which required them to stand, no seating was placed in reasonable proximity to their
8 workstations.

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

15 103. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
16 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
17 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
18 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
19 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
20 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
21 Aggrieved Employee, results in a separate civil penalty.

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

27 105. Therefore, DEFENDANTS' violations with respect to, including but not limited to,
28 meal periods, rest periods, cooldown recovery periods, recordkeeping provisions, minimum wages

1 and overtime wages, seating, and unreimbursed business expenses result in separate violations of
2 sections 1198 and 1199.

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

8 107. **Unlawful Agreements-Unlawful Criminal History Inquiries.**
9 Unlawful Financial and Criminal Background Checks.

10 108. Based on information and belief, DEFENDANTS required Aggrieved Employees to
11 agree in writing to unlawful conditions of employment including but not limited to unlawful
12 criminal and/or financial checks and/or unlawful non-compete/non solicitation agreements as a
13 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

19 110. Based on information and belief, DEFENDANTS also required Aggrieved
20 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
21 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
22 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
23 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*)

24 111. Based on information and belief, DEFENDANTS required Aggrieved Employees to
25 agree in writing to a background check which failed to abide by the requirements set forth in CA
26 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
27 failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all),
28 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for

1 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
2 failing to provide a way by which the individual could request a copy of the report, failing to disclose
3 the name, address, and telephone number of the third party preparing the report, and failing to
4 properly obtain authorization or consent to such a background check, and thus was an unlawful
5 background check.

6 112. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
7 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
8 section 432.5.

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

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

17 115. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
18 condition of employment, DEFENDANTS violated Labor Code section 432.5.

19 Unlawful Inquires into Criminal History

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

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

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

FIRST CAUSE OF ACTION
VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS 2698, ET SEQ.
(On behalf of Plaintiff, Aggrieved Employees, and the State of California against all Defendants)

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

Failure to Keep Accurate Records

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

121. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate and complete 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 PLAINTIFF and other Aggrieved Employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

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

¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor 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”) (*emphasis added*).

1 **Meal Period Violations**

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

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

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

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

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

2 127. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
3 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
4 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
5 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
6 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
7 periods completely.

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

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

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

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

23 132. These unlawful meal period policies and practices result in violations of Labor Code
24 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
25 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
26 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
27 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

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Rest Period Violations

133. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period “insofar as practicable.” 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 period for shifts from 3 ½ to 6 hours in a 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. If the employer fails to provide any required rest period, the employer must pay the employee one hour of pay at the employee’s regular rate of compensation for each workday the employer did not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and applicable IWC Wage Order, §12(B).

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

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

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

1 137. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
2 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
3 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
4 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
5 but not limited to, bonuses/incentive pay, shift differential pay, multiple base rates of pay and/or
6 other non-discretionary compensation into the regular rate of compensation for purposes of
7 determining the owed rest period premium.

8 138. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
9 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
10 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

11 **Failure to Provide Cooldown Recovery Periods**

12 139. California Code of Regulations, Title 8, section 3395 mandates that all employers
13 with “outdoor places of employment” implement a heat illness prevention program that includes,
14 among other requirements, providing workers “cool-down” periods of at least five minutes in the
15 shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take
16 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
17 need to do so to protect themselves from overheating” and that “such access to shade shall be
18 permitted at all times.” Pursuant to Labor Code section 226.7(b), an employer is prohibited from
19 requiring an employee to work during a recovery period mandated by an applicable statute, or
20 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
21 Safety and Health Standards Board, or the Division of Occupational Safety and Health.

22 140. Pursuant to Section 15 of IWC Wage Orders applicable to Aggrieved Employees,
23 the temperature maintained in each work area “shall provide reasonable comfort consistent with
24 industry-wide standards for the nature of the process and the work performed.”

25 141. DEFENDANTS were required to authorize and permit Aggrieved Employees to take
26 recovery periods, due to, including but not limited to, the intense heat conditions in the work area
27 and consistent with industry-wide standards for the type of labor Aggrieved Employees were
28 required to perform.

1 142. DEFENDANTS failed to authorize or permit Aggrieved Employees to take recovery
2 periods as required by California law. Based on information and belief, DEFENDANTS suffered
3 and permitted Aggrieved Employees to work under intense heat conditions without allowing
4 Aggrieved Employees to take recovery periods as needed to prevent heat-related illness.
5 PLAINTIFF and Aggrieved Employees were required to spend multiple hours at a time outdoors in
6 significantly high temperature heat conditions. DEFENDANTS failed to provide proper heat illness
7 prevention training and/or heat illness policies/practices/programs as required by California's Heat
8 Illness Prevention statute, Title 8 Section 3395(d). DEFENDANTS failed to provide adequate
9 access to drinking water as required by California's Heat Illness Prevention statute, Title 8 Section
10 3395(c). Moreover, DEFENDANTS maintained a policy and practice of not permitting necessary
11 time for cooldown recovery breaks, and as a result, Aggrieved Employees were required to remain
12 outdoors with little to no access to shade for extended periods of time. In addition, DEFENDANTS,
13 failed to pay Aggrieved Employees with an additional hour of pay at their regular rate(s) of pay for
14 each missed cooldown recovery period.

15 143. Based on information and belief, DEFENDANTS did not have a policy or practice
16 in place that authorized or permitted Aggrieved Employees to take recovery periods when suffering
17 from heat-related illness despite creating working conditions that exposed Aggrieved Employees to
18 extreme heat conditions. Aggrieved Employees were unable to take proper recovery periods due to,
19 including but not limited to, lack of relief workers available/scheduling issues, and/or having to
20 complete work tasks.

21 144. DEFENDANTS did not pay Aggrieved Employees one additional hour of pay at their
22 respective regular pay rate(s) for each workday a recovery period was not provided as required by
23 law, in violation of California Labor Code section 226.7 and all applicable IWC Wage Orders. Each
24 violation of each Labor Code section and IWC Wage Order provision, for each Aggrieved
25 Employee, results in a separate civil penalty.

26 **Minimum and Overtime Wage Violations**

27 145. California law provides that employees in California must be paid for all hours
28 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less

1 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
2 The minimum wage standard applies to each hour employees worked for which they were not paid.
3 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
4 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
5 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

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

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

27 150. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
28 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for

1 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
2 violation of California's overtime laws.

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

10 **Statutory Wage Violations**

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

22 **Refusal to Make Payment**

23 153. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
24 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
25 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
26 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
27 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
28 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil

1 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
2 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

3 **Business Expense Violations**

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

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

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

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

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

26 _____
27 ² 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).

1 159. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
2 Employees have suffered injury in that they were not completely reimbursed as mandated by
3 California law.

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

8 **Wage Statement Violations**

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

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

28 163. As explained above, wage statements issued by DEFENDANTS failed to list the

1 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
2 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
3 employer control during unpaid meal periods, payment according to scheduled hours worked rather
4 than actual hours worked, and/or other off-the-clock work policies and practices all described in
5 greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all
6 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section
7 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

8 164. Based on information and belief, wage statements issued by DEFENDANTS failed
9 to list all applicable hourly rates in effect during the pay period and the corresponding number of
10 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For
11 example, based on information and belief, DEFENDANTS’ wage statements issued to PLAINTIFF
12 and other Aggrieved Employees do not provide an accurate overtime rate because instead of
13 multiplying the regular rate of pay by one and one-half, the wage statements provide at least two
14 separate overtime rate categories with each providing an inaccurate overtime rate based on each
15 base rate of pay as opposed to the regular rate of pay. As such, PLAINTIFF and other Aggrieved
16 Employees are forced to perform extensive calculation using outside resources to determine what
17 their pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp.
18 2d 1222 (C.D. Cal. 2011). As described herein, DEFENDANTS also failed to incorporate all forms
19 of non-discretionary compensation earned during the pay period, including but not limited to, non-
20 discretionary bonus/incentive pay and/or shift differential pay and/or other non-discretionary
21 compensation and/or multiple base rates of pay into the overtime pay rate calculation, and as such,
22 failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and
23 other Aggrieved Employees.

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

27 166. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
28 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved

1 Employees over whether they received all wages owed to them.

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

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

8 169. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
9 Aggrieved Employees with accurate, itemized wage statements.

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

19 171. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
20 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
21 during which the statute provisions were violated. ³

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

23 172. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
24 Orders, section 7 require that employers keep the following information on file for each employee
25 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
26 and the corresponding number of hours worked by the employee at each hourly rate, when the
27 employee begins and ends each work period (including meal periods) and split intervals; total hours

28 ³ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 worked by the employee; all deductions; gross wages earned; and net wages earned.

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

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

20 175. Based on information and belief, DEFENDANTS fail to timely produce or make
21 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
22 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
23 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

24 **Seating Violations**

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

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

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

3 179. (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.

7 180. 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).

11 181. 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.

14 182. 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 PLAINTIFF and other Aggrieved
16 Employees were working. Lastly, there were periods of time when PLAINTIFF and other Aggrieved
17 Employees were not engaged in active duties of their employment, yet there were no suitable seats
18 in reasonable proximity to the work area and use of seats would not interfere with the performance
19 of their duties.

20 183. The Aggrieved Employees worked in various positions. 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**

28 184. 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, cooldown recovery periods, record keeping
5 provisions, business expenses, seating, and minimum/overtime wages result in separate violations
6 of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code
7 sections 1197.1 and 2699.

8 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

27 195. Based on information and belief, DEFENDANTS had and continue to have a
28 uniform policy and practice of failing to allow Aggrieved Employees to use their earned

1 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
2 to Aggrieved Employees upon separation of employment, in violation of California law, including
3 but not limited to, Labor Code section 227.3.

4 **Untimely Payment of Final Wages**

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

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

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

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

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

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

3 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

4 **Unlawful Agreements.**

5 201. Labor Code section 432.5 provides that “no employer...shall require any employee
6 or applicant for employment to agree, in writing, to any term or condition which is known by such
7 employer...to be prohibited by law.” DEFENDANTS required and continue to require PLAINTIFF
8 and Aggrieved Employees to agree in writing to submit to unlawful criminal and/or financial checks
9 as a condition of obtaining and/or continuing employment.

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

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

26 204. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 submit and/or agree to submit in writing to unlawful criminal background checks and/or unlawful
28 non-compete and/or unlawful non-solicitation agreements as a condition of obtaining and/or holding

1 employment in violation of the ICRAA and the FCRA as alleged above and/or the California
2 Business and Professions Code and/or the California Labor Code.

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

8 206. Based on further information and belief, DEFENDANTS knew that requiring
9 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
10 condition of obtaining and/or holding employment was unlawful.

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

13 Unlawful Inquires into Criminal History

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

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

23 210. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
24 Code section 432.7. By asking about convictions at the application phase or prior to extending an
25 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
26 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
27 disclose arrests and/or convictions as a condition of employment.

28 211. Under the provisions of PAGA and the above mentioned Labor Code sections,

1 including but not limited to Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.6,
2 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199,
3 2802, 2810.5 and all applicable Wage Orders as well as all interpretations of these laws by California
4 Courts and administrative bodies, as well as any other law that is enforceable through PAGA,
5 DEFENDANTS are liable for the following penalties:

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

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

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

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

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PRAYER FOR RELIEF

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

1. For civil penalties under Labor Code Section 2699 (75% payable to the 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: January 18, 2023

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff

EXHIBIT

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Los Angeles Office
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office: (310) 496-5818
fax: (310) 510-6429

November 10, 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:

Steve Ithurburn
Agent for Service of Process for:
Lamon Construction Company, Inc.
871 Von Geldern Way
Yuba City, CA 95993

Lamon Construction Company, Inc.
Attn: Human Resources/ Legal Department
871 Von Geldern Way
Yuba City, CA 95993

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Lamon Construction Company, Inc.
Date: November 10, 2022
Subject: *David Josephson v. Lamon Construction Company, Inc. et. al.*

Introduction

This office represents COMPLAINANT, David Josephson (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: Lamon Construction Company, 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 construction company, providing construction of nonresidential buildings and other construction services to customers in California. Although EMPLOYER may operate successful companies 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 construction worker or similar title from in or around July 2019 through the separation of his employment, on or about February 4, 2022. Most of COMPLAINANT's work for EMPLOYER was performed in Sutter County. COMPLAINANT worked for EMPLOYER out of EMPLOYER's locations including but not limited to, EMPLOYER's facility located on Von Geldern Way in Yuba City, California. COMPLAINANT regularly worked at least eight (8) hours per day, at least five (5) days per week. Occasionally, COMPLAINANT had shifts as long as 13 hours per day. During most of his employment with EMPLOYER, COMPLAINANT worked on a paving crew consisting of at least ten (10) other construction workers. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

COMPLAINANT consistently worked without being provided a first or second meal period. For example, on August 24, 2021, COMPLAINANT worked at least 9 hours, but was not provided with a first meal period. On August 25, 2021, COMPLAINANT worked at least 8 hours and was not provided with a first meal period. On August 26, 2021, COMPLAINANT worked at least 12

hours and was not provided with a first or second meal period. On August 27, 2021, COMPLAINANT worked at least 12.5 hours and was not provided with a first or second meal period. COMPLAINANT was also not authorized or permitted to take rest breaks at any time, including, for example, during the August 23, 2021 through August 27, 2021 workweek. COMPLAINANT was not paid premium wages for unprovided meal or rest periods at any time, including during for the August 23, 2021 through August 27, 2021 workweek. Based on information and belief, EMPLOYER automatically deducted thirty minutes of wages from COMPLAINANT's pay per shift for a meal period COMPLAINANT did not receive between August 23, 2021 and August 27, 2021. This time was compensable work time that was owed to COMPLAINANT as hours worked.

On October 11, 2021, COMPLAINANT worked at least 10.5 hours, but was not provided with a first or second meal period. On October 12, 2021, COMPLAINANT worked at least 9 hours, but was not provided with a first meal period. On October 14 and 15, 2021, COMPLAINANT worked at least 8.5 hours each day, but was not provided with a first meal period. COMPLAINANT was not paid meal period premiums for these unprovided meal periods. COMPLAINANT was also not authorized or permitted to take rest breaks at any time, including, for example, during the October 11, 2021 through October 15, 2021 workweek. COMPLAINANT was not paid premium wages for unprovided meal or rest periods at any time, including during the October 11, 2021 through October 15, 2021 workweek. Based on information and belief, EMPLOYER automatically deducted thirty minutes of wages from COMPLAINANT's pay per shift for a meal period COMPLAINANT did not receive between October 11, 2021 and October 15, 2021. This time was compensable work time that was owed to COMPLAINANT as hours worked.

Similarly, COMPLAINANT worked during the November 28, 2021 to December 4, 2021 pay period and was not provided with first or second meal break. COMPLAINANT was also not authorized or permitted to take rest breaks at any time, including for example, during the November 28, 2021 to December 4, 2021 workweek. COMPLAINANT was not paid premium wages for unprovided meal or rest periods at any time, including during the November 28, 2021 to December 4, 2021 workweek. Based on information and belief, EMPLOYER automatically deducted thirty minutes of wages from COMPLAINANT's pay per shift for a meal period COMPLAINANT did not receive between November 28, 2021 and December 4, 2021. This time was compensable work time that was owed to COMPLAINANT as hours worked.

Furthermore, COMPLAINANT's wage statements failed to comply with Labor Code section 226, as the wage statements COMPLAINANT received the August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021 pay periods failed to list the correct total hours worked (failing to include time spent working during automatically deducted meal breaks and other off-the-clock work), failed to include the correct gross and net wages earned, and failed to include meal and rest period premium pay.

COMPLAINANT was not reimbursed for the business use of his cellphone, which was used to communicate with EMPLOYER, including supervisors, foremen, and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding work-

related issues. COMPLAINANT was also not reimbursed for the business use of his personal vehicle, including mileage, wear and tear, and gas when he was required to drive between job sites. On information and belief, during the workweeks of August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021, COMPLAINANT was required to use his personal vehicle for business purposes without reimbursement for mileage, wear and tear on the vehicle, or gas. On information and belief, during the workweeks of August 23-27, 2021, October 11-15, 2021, and November 28-December 4, 2021, COMPLAINANT was required to use his personal cellphone and data plan for business purposes without reimbursement.

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 calculations; (5) 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; (6) 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; (7) 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; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) 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; (11) 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; (12) 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; (13) 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; (14) failed and continues to fail to provide suitable seating; and (15) 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.¹

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

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

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

Personnel Records

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

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on March 17, 2022, COMPLAINANT, through counsel, sent a written request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by

¹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

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.* 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 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 he was required to work through part or all of his owed first meal period most if not all shifts he worked.

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, COMPLAINANT was prohibited from leaving the worksite during his shifts, including during any purported meal periods. Also, at all times during his shifts, including but not limited to, during any purported meal periods, COMPLAINANT was required to monitor his personal cell phone for work-related communications from his foremen/supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

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, he was not provided with any form of a second meal period. For instance, on 11/24/21, COMPLAINANT worked at least eleven (11) hours and was not provided with a second meal period; on 12/2/21 and 12/3/21, COMPLAINANT worked at least 11.5 hours and was not provided with a second meal period; on 1/21/22 and 1/22/22,

COMPLAINANT worked at least eleven (11) hours and 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.² 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 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, COMPLAINANT was not informed, authorized, instructed about nor permitted an opportunity to take off-duty rest periods for every

² 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”).

four hours worked or major fraction thereof. Any rest periods were taken once tasks were completed and/or as time permitted. COMPLAINANT estimates he had to work through his owed rest periods most if not all shifts he worked for EMPLOYER.

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.

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 hours, he was not provided with any version of a third rest period. For instance, COMPLAINANT worked shifts lasting longer than ten hours on including but not limited to, 11/24/21, 12/2/21, 12/3/21, 1/21/22 and 1/22/22 and was not provided with any version of a third rest period during those shifts.

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, COMPLAINANT was required to monitor and respond to work-related communications on his personal cell phone at all times during his shifts, including but not limited to, during any purported rest periods. COMPLAINANT was also required to remain on the worksite during any purported 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, 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.³

Cooldown Recovery Period Violations: California Code of Regulations, Title 8, section 3395 mandates that all employers with “outdoor places of employment” implement a heat illness prevention program that includes, among other requirements, providing workers “cool-down” periods of at least five minutes in the shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the need to do so to protect themselves from overheating” and that “such access to shade shall be permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide an employee a recovery period, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend multiple hours at a time outdoors in significantly high temperature heat conditions. EMPLOYER failed to provide proper heat illness prevention training and/or heat illness policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8 Section 3395(d). EMPLOYER failed to provide adequate access to drinking water as required by California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, EMPLOYER maintained a policy and practice of not permitting necessary time for cooldown recovery breaks, and as a result, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain outdoors with little to no access to shade for extended periods of time. In addition, EMPLOYER, failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with an additional hour of pay at COMPLAINANT’s regular rate of pay for each missed cooldown recovery period.

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.

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

³ 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”).

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 perform pre-shift and post-shift off-the-clock work outside of his scheduled shift times, for which EMPLOYER did not compensate COMPLAINANT, resulting in the underpayment of wages owed to COMPLAINANT. For instance, COMPLAINANT was required to be at the construction job site by his scheduled shift start time. However, EMPLOYER required COMPLAINANT to first drive to EMPLOYER’s yard/facility located on Von Geldern to retrieve equipment, such as but not limited to, water shovels, rakes, water meters, rollers, small excavators and/or other items/equipment, load and/or prepare the trailer and/or truck and/or complete other work tasks prior to traveling to the assigned construction site. Similarly, COMPLAINANT was required to return to EMPLOYER’s facility on Von Geldern Way after his scheduled shift ended to return and/or unload equipment, the trailer and/or truck and/or perform other work tasks off-the-clock, resulting in the underpayment of wages owed to COMPLAINANT. COMPLAINANT estimates these pre-shift and post-shift off-the-clock work tasks he was required to perform resulted in an average of at least an hour of off-the-clock work each shift he worked for which EMPLOYER failed to compensate COMPLAINANT, resulting in the significant underpayment of wages owed to COMPLAINANT.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet EMPLOYER's goals and expectations. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their personal phones and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. For example, COMPLAINANT estimates he received work-related phone calls and/or messages to his personal cell phone from his foremen/supervisor and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES outside of his scheduled shift times at least a couple times per week. This time COMPLAINANT was required to spend responding to work-related phone calls and/or messages outside of his scheduled shift times was not compensated, resulting in the underpayment of wages owed to COMPLAINANT.

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 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. For example, EMPLOYER's time records for COMPLAINANT and wage statements issued to COMPLAINANT show EMPLOYER rounded COMPLAINANT's hours worked to at least the nearest half hour. For instance, EMPLOYER's time records for COMPLAINANT beginning on 11/28/21 through 12/4/21 show a consistent shift start or "in" time of precisely 7:00 a.m. for each shift worked from 11/28/21 through 12/4/21 and a shift end/ "out" time that is rounded to the nearest half hour. For example, from 11/28/21 through 12/4/21, COMPLAINANT's shift end times are rounded to nearest quarter hour and recorded as included but not limited to 3:30 p.m., 4:30 p.m, or 6:30 p.m. Likewise, EMPLOYER's time records for COMPLAINANT for the subsequent week (i.e. beginning on 12/5/21 and ending on 12/11/21) evidence that each recorded time entry is rounded to the nearest half hour. 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.⁴

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-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.

⁴ 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").

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 sometimes paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES multiple rates of base pay in one workweek but failed to incorporate all multiple rates of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For example, at times, COMPLAINANT earned multiple base pay rates during the same workweek, yet, EMPLOYER failed to incorporate all/both base pay rates into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT. Based on information and belief, EMPLOYER similarly failed to incorporate multiple base rates of pay earned in a workweek by other NON-EXEMPT AGGRIEVED EMPLOYEES into the regular rate of pay used to calculate the owed overtime rate(s), resulting in unpaid wages to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus 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.⁵

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

⁵ 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 “in 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”).

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.⁶

⁶ 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).

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). For example, EMPLOYER's wage statements issued to COMPLAINANT show EMPLOYER rounded COMPLAINANT's hours worked to the nearest half hour, thereby failing to list the accurate hours COMPLAINANT worked on EMPLOYER's issued wage statements. 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).

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.

Based on information and belief, wage statements issued by EMPLOYER failed to list 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). For example, based on information and belief, EMPLOYER's wage statements issued to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES do not provide an accurate overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage statements provide at least two separate overtime rate categories with each providing an inaccurate overtime rate based on each base rate of pay as opposed to the regular rate of pay. As such, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are forced to perform extensive calculation using outside resources to determine what their pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period, including but not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or other non-discretionary compensation and/or multiple base rates of pay 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.⁷

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

⁷ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

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.

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.⁸

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 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.

⁸ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

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. For example, COMPLAINANT’s employment separated, on or about February 4, 2022, yet COMPLAINANT was not provided his final paycheck until more than several days after COMPLAINANT’s employment ended, and the final paycheck was devoid of all wages owed, 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.

Moreover, EMPLOYER failed to timely provide all owed wages immediately upon discharge of employment. For example, at times, including but not limited to, during winter 2021, COMPLAINANT experienced breaks in his employment caused by EMPLOYER whereby COMPLAINANT would not be called in for work for longer than a single pay period due to including but not limited to EMPLOYER’s lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, EMPLOYER failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

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.⁹

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).

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. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. 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.

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. 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

⁹ (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”).

work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing. For example, COMPLAINANT was required to supply his own work boots and at times had to supply his own earplugs and Covid-protection masks EMPLOYER required yet COMPLAINANT was not reimbursed by EMPLOYER for the business expenses he incurred in connection therewith. Also, during at least seventy-five percent of COMPLAINANTs shifts, COMPLAINANT received work-related calls and/or messages from his foremen/supervisors, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES and also received work-related calls and/or messages outside his scheduled shift times at least a couple times per week without being provided any reimbursement for EMPLOYER's business use of his personal mobile phone.

Additionally, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and gas when they were required to drive between job sites. For example, while at times EMPLOYER purported to provide a company vehicle, COMPLAINANT was regularly required to use his personal vehicle to drive from EMPLOYER's yard to the construction job site(s) and/or between various job site(s) during the months at a time EMPLOYER did not provide any company vehicle at all and/or at other times due to the company vehicle being unavailable and/or in use. For example, for the approximately last four (4) months of COMPLAINANT's employment, after arriving at work, COMPLAINANT had to use his personal vehicle to drive from EMPLOYER's yard to the construction job site and then drive his personal vehicle from the job site back to EMPLOYER's yard at the end of his shift but was not provided any reimbursement for EMPLOYER's business use of his personal vehicle. COMPLAINANT was required to use his personal vehicle for business purposes without reimbursement for mileage, wear and tear on the vehicle, or gas.

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 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.

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 (e.g., EMPLOYER’s purported background check

disclosure contains/contained a liability waiver and/or other 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 FRCA, 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.

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, appearing to read "Kiara Bramasco". The signature is fluid and cursive, with the first name "Kiara" being more prominent than the last name "Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC