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on behalf of the State of California and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

IZAZQUN GARIBAY GONZALEZ on
behalf of the State of California and
Aggrieved Employees,

Plaintiff,

v.

BIMBO BAKERIES USA, INC., a
Delaware Corporation; EARTHGRAINS
DISTRIBUTION, LLC; a Delaware
Limited Liability Company;
EARTHGRAINS BAKING COMPANIES,
LLC; a Delaware Limited Liability
Company; and DOES 1-100, inclusive,

Defendants.

Case No.: CVRI2300948

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

1 Plaintiff, IZAZQUN GARIBAY GONZALEZ (“PLAINTIFF”), on behalf of the State of
2 California and all Aggrieved Employees (as defined below), hereby files this representative action
3 against Defendants BIMBO BAKERIES USA, INC., a Delaware Corporation; EARTHGRAINS
4 DISTRIBUTION, LLC; a Delaware Limited Liability Company; EARTHGRAINS BAKING
5 COMPANIES, LLC; a Delaware Limited Liability Company; and DOES 1-100, inclusive,
6 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
7 thereon alleges as follows:

8 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

25 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
26 California and a citizen of the State of California. PLAINTIFF worked for DEFENDANTS for
27 approximately seven years through in or around March 2022. PLAINTIFF worked for
28 DEFENDANTS delivering bread products to stores in California.

1 5. At all relevant times, PLAINTIFF was a non-exempt employee of DEFENDANTS
2 that was misclassified by DEFENDANTS as an independent contractor.

3 6. Defendant BIMBO BAKERIES USA, INC., is a Delaware Corporation that, at all
4 relevant times, was authorized to do business within the State of California and is doing business in
5 the State of California.

6 7. Defendant EARTHGRAINS DISTRIBUTION, LLC is a Delaware Limited Liability
7 Company that, at all relevant times, was authorized to do business within the State of California and
8 is doing business in the State of California.

9 8. Defendant EARTHGRAINS BAKING COMPANIES, LLC is a Delaware Limited
10 Liability Company that, at all relevant times, was authorized to do business within the State of
11 California and is doing business in the State of California.

12 9. DEFENDANTS and their managing agents own, operate, or otherwise manage
13 companies that produce, sell, and distribute bread and baked goods nationwide including but not
14 limited to in California. DEFEDANTS are the largest commercial baking company in the United
15 States and delivers, various bread products including but not limited to bagels, muffins, buns, and
16 sweet baked goods.

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

23 11. PLAINTIFF is further informed and believes that, at all relevant times, each
24 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
25 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
26 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
27 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
28 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this

1 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
2 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
3 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
4 controlled, aided and abetted the conduct of all other Defendants.

5 JOINT LIABILITY

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

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

1 PLAINTIFF and Aggrieved Employees to work for them.

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

14 15. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
15 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
16 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
17 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
18 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
19 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
20 Employees. As such, DEFENDANTS exercised control over various aspects of PLAINTIFF's
21 employment including but not limited to creating and implementing policies to which PLAINTIFF
22 was subjected to and/or controlling the payment of wages and/or compensation for PLAINTIFF and
23 other Aggrieved Employees.

24 16. Upon further information and belief, PLAINTIFF alleges that DEFENDANTS
25 created a uniform set of policies, practices and/or procedures concerning, inter alia, pay rates, time-
26 keeping practices, meal and rest periods, and/or other working conditions that were distributed to,
27 and/or applied to PLAINTIFF and Aggrieved Employees, and further that DEFENDANTS
28 uniformly compensated and controlled the wages of PLAINTIFF and Aggrieved Employees in a

1 uniform manner. Upon information and belief, DEFENDANTS further collectively represented to
2 PLAINTIFF and Aggrieved Employees and the policies applicable to PLAINTIFF and Aggrieved
3 Employees by which DEFENDANTS collectively would evaluate their pay rates.

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

10 18. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
11 control over, applied the same policies and practices, and engaged in the same acts and omissions
12 with regard to all Aggrieved Employees.

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

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

22 **PAGA ALLEGATIONS**

23 21. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
24 of the State of California and Aggrieved Employees, regarding violations of the California Labor
25 Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

26 All individuals who currently work or formerly worked for
27 DEFENDANTS in California at any time from one year plus 65 days
28 from the filing of the initial Complaint through the present ("PAGA

Period”).

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

COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS

23. On December 16, 2022, PLAINTIFF, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA Letter”). On January 31, 2023, PLAINTIFF, through counsel, gave written amended notice (“Amended PAGA Letter”) informing the LWDA of additional violations committed by DEFENDANTS with regard to PLAINTIFF and other Aggrieved Employees as alleged in this Complaint. Attached hereto as **Exhibit 1** is a true and correct copy of the Amended PAGA Letter also sent to DEFENDANTS via certified mail.

24. The PAGA Letter outlined PLAINTIFF’s representative claims for violations of the California Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved Employees.

25. The LWDA did not provide notice of its intention to investigate DEFENDANTS’ violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code

1 section 2699.3. Consequently, PLAINTIFF's right to file the instant representative action on behalf
2 of the State of California and Aggrieved Employees has duly accrued.

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

6 **FACTUAL AND LEGAL ALLEGATIONS**

7 27. During the PAGA Period, PLAINTIFF and other Aggrieved Employees were
8 employed by DEFENDANTS in the State of California. At all relevant times, PLAINTIFF and other
9 Aggrieved Employees were non-exempt employees of DEFENDANTS misclassified as
10 independent contractors. At all relevant times referenced herein, DEFENDANTS exercised control
11 over PLAINTIFF and the other Aggrieved Employees and suffered and/or permitted them to work.

12 28. PLAINTIFF worked for DEFENDANTS for approximately seven years through in
13 or around March 2022. PLAINTIFF worked for DEFENDANTS delivering bread products to stores
14 in California. PLAINTIFF was paid on a commission basis based on the total bread and/or baked
15 goods distributed/delivered for DEFENDANTS. PLAINTIFF was responsible for delivering baked
16 goods produced by DEFENDANTS to stores in PLAINTIFF's assigned route/area. Each morning,
17 PLAINTIFF was required to pick up bread products from DEFENDANTS' facilities no later than
18 by 5:30 am and was required to distribute the bread products to stores that sell DEFENDANTS'
19 bread products. PLAINTIFF was pressured by DEFENDANTS to complete deliveries in a timely
20 manner or would face disciplinary measures for failing to distribute bread in the manner required
21 by DEFENDANTS. For example, if PLAINTIFF picked up DEFENDANTS' bread product after
22 5:30 am, DEFENDANTS charged PLAINTIFF a penalty in the amount of at least \$50 for failing to
23 pick up the product in a timely manner.

24 29. PLAINTIFF was also required to scan each product via a handheld device which
25 provided DEFENDANTS with information regarding the products distributed by PLAINTIFF
26 including but not limited to the status of deliveries, returns, promotions, and/or invoices. At the end
27 of each day, PLAINTIFF was required to provide these status updates to DEFENDANTS.

28 30. Additionally, at the end of each day, PLAINTIFF was required to return to

1 DEFENDANTS' warehouse to drop off any unsold product and/or product that was not delivered.
2 DEFENDANTS pressured PLAINTIFF to minimize the amount of product that was unsold and/or
3 returned to DEFENDANTS' warehouses by disciplining PLAINTIFF and other Aggrieved
4 Employees that returned too much product by charging PLAINTIFF a fee based on the amount of
5 product returned and/or based on the percentage of product returned to DEFENDANTS' warehouse.
6 DEFENDANTS also threatened to end the work relationship with PLAINTIFF if he failed to deliver
7 DEFENDANTS' bread products in a satisfactory manner and/or if PLAINTIFF's returned product
8 exceeded an amount set by DEFENDANTS.

9 31. Moreover, DEFENDANTS required PLAINTIFF to use his own tools, vehicle, and
10 equipment to deliver DEFENDANTS' bread products. Although DEFENDANTS provided dollies,
11 trays, and a handheld inventory device, PLAINTIFF was responsible for any lost and/or broken
12 tools and was required to pay for any repairs to tools provided by DEFENDANTS. PLAINTIFF was
13 also required to provide all other tools including but not limited to a delivery vehicle and was
14 required to pay for the cost of repairing any tools provided by DEFENDANTS.

15 32. DEFENDANTS also required that PLAINTIFF use DEFENDANTS' brand name
16 when presenting himself to DEFENDANTS' customers/stores by including but not limited to
17 requiring that PLAINTIFF wear a shirt with DEFENDANTS' logo when completing deliveries.

18 33. DEFENDANTS further required that PLAINTIFF abide by rules and policies
19 enforced by DEFENDANTS including but not limited to, maintaining an adequate supply of
20 DEFENDANTS' products at assigned stores; rotate DEFENDANTS' products at store locations to
21 increase sales and/or prevent stale bread products that would be returned; removing stale bread
22 products from assigned store locations in PLAINTIFF's delivery route, and meeting
23 DEFENDANTS' guidelines and expectations including but not limited to meeting delivery
24 windows, providing product and invoice updates to DEFENDANTS, reducing the amount of
25 product returns, and/or other responsibilities as assigned and imposed by DEFENDANTS. At all
26 times, DEFENDANTS could terminate PLAINTIFF's work for failure to comply with any of these
27 rules and/or policies.

28 34. DEFENDANTS applied these same policies and practices to all Aggrieved

1 Employees.

2 35. At all relevant times, DEFENDANTS and similarly Aggrieved Employees were non-
3 exempt employees of DEFENDANTS that were misclassified by DEFENDANTS as independent
4 contractors.

5 36. **Willful Misclassification as Independent Contractor.** At all relevant times,
6 PLAINTIFF and Aggrieved Employees were non-exempt employees that were misclassified by
7 DEFENDANTS as independent contractors. DEFENDANTS willfully misclassified Aggrieved
8 Employees as independent contractors to evade California wage and hour laws. To qualify as an
9 independent contractor under California law, (a) the worker must be free from the employer's
10 control and direction in the performance of the work, both under the contract for the performance
11 of the work and in fact; (b) the work performed must be outside the usual course of the employer's
12 business; and (c) the worker must not be customarily engaged in an independently established trade,
13 occupation, or business of the same nature as the work he performed for employer. *Dynamex*
14 *Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three
15 conditions must be met, or the worker has been misclassified.

16 37. Despite DEFENDANTS efforts to evade California wage and hour laws by setting
17 up an alleged contractor scheme, the reality is that PLAINTIFF and Aggrieved Employees are and
18 were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and
19 other Aggrieved Employees are/were not free from DEFENDANTS' control and direction in the
20 performance of work, both under the contract for the performance of the work and in fact; (b) The
21 work PLAINTIFF and other Aggrieved Employees perform/performed is/was entirely within the
22 usual course of DEFENDANTS' business of selling and distributing DEFENDANTS' bread and
23 baked goods products; and (c) PLAINTIFF and other Aggrieved Employees are not/were not
24 customarily engaged in an independently established trade, occupation, or business of the same
25 nature as the work they perform/performed for DEFENDANTS.

26 38. For example, as explained above, DEFENDANTS implemented rules and policies
27 that PLAINTIFF and other Aggrieved Employees were required to comply with in order to continue
28 delivering products for DEFENDANTS. PLAINTIFF and other Aggrieved Employees faced

1 disciplinary actions including but not limited to paying penalties imposed by DEFENDANTS for
2 failing to comply with DEFENDANTS' rules and/or expectations for delivered and sold bread
3 products. Moreover, PLAINTIFF and other Aggrieved Employees were required to meet delivery
4 windows, pick-up product from DEFENDANTS by a particular time each morning, return any
5 unsold product back to DEFENDANTS, and provide status updates to DEFENDANTS regarding
6 the status of deliveries and report any unsold product. As such, DEFENDANTS controlled virtually
7 every aspect of PLAINTIFF's and Aggrieved Employees' job duties and maintained the right to
8 termination their work based on past and/or unsatisfactory performance. Additionally,
9 PLAINTIFF's and Aggrieved Employees' work was in the usual course of DEFENDANTS'
10 business of delivering and distributing DEFENDANTS' bread products to communities in
11 California. As explained in DEFENDANTS' website, "As the largest commercial baking company
12 in the U.S., we are proud to deliver our bread, bagels, buns, English muffins and sweet baked goods
13 to every town, city and community in the United States."¹

14 39. Additionally, based on information and belief, PLAINTIFF and other Aggrieved
15 Employees incur/incurred no opportunity for "profit" or "loss"; rather, DEFENDANTS managed
16 the business operation, attracted customers or clients, advertised, and obtained customers.
17 PLAINTIFF and other Aggrieved Employees' investment is/was minor compared to that of
18 DEFENDANTS. PLAINTIFF and other Aggrieved Employees have made no capital investment in
19 any of DEFENDANTS' facilities, advertising, maintenance, staffing, or electronic systems. Based
20 on information and belief, Aggrieved Employees owned no enterprise, exercised no business
21 management skills, and maintained no separate business structures or facilities.

22 40. Based on the work relationship described above, there can be no doubt that
23 PLAINTIFF and other Aggrieved Employees were at all relevant times DEFENDANTS' employees
24 – not independent contractors. Thus, DEFENDANTS' conduct constitutes an intentional, willful
25 pattern and/or practice of misclassification.

26 41. DEFENDANTS misclassified and continues to misclassify PLAINTIFF and other
27 Aggrieved Employees as independent contractors to try to evade California labor laws that protect

28 ¹ See <https://www.bimbobakeriesusa.com/about-us>. Last visited on December 16, 2022.

1 employees, such as but not limited to, minimum and overtime wage and sick pay laws, workers'
2 compensation laws, expense reimbursement requirements, record-keeping requirements, wage
3 statement requirements, and requirements as to the timely payment of wages during and upon
4 separation of employment.

5 42. As part of its misclassification scheme, DEFENDANTS have failed and continue to
6 fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements,
7 failed and continues to fail to secure workers' compensation, failed and continues to fail to
8 reimburse expenses, failed and continues to fail to keep accurate and complete payroll records, failed
9 and continues to fail to furnish timely, accurate itemized wage statements, failed and continues to
10 fail to pay all wages due and owing upon separation of employment, and failed and continues to fail
11 to pay all wages owed every pay period, among other labor code violations, described in further
12 detail below.

13 43. **Meal Period Violations.** PLAINTIFF and Aggrieved Employees consistently
14 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
15 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
16 (30) minute first and second meal periods. PLAINTIFF and other Aggrieved Employees were and
17 are consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods due to
18 nature and constraints of their job duties. DEFENDANTS did not provide any form or version of a
19 meal period.

20 44. DEFENDANTS willfully misclassified and continues to willfully misclassify
21 PLAINTIFF and similarly Aggrieved Employees as independent contractors to evade California
22 meal period laws.

23 45. PLAINTIFF and other Aggrieved Employees were not permitted to take timely, off
24 duty, thirty-minute, uninterrupted meal periods due to DEFENDANTS' misclassification, and due
25 to the nature and constraints of their job duties, often being forced to take late meal periods,
26 interrupted meal periods, and/or work through part or all their meal periods. For example, after five
27 (5) hours of work, PLAINTIFF and other Aggrieved Employees were required to continue working
28 due to their need to complete deliveries in a timely manner and/or meet delivery windows, rotate

1 DEFENDANTS' products at stores, provide status update to DEFENDANTS regarding delivered
2 product, communicate with DEFENDANTS via phone calls and/or text message and/or complete
3 other related work tasks. As such, PLAINTIFF and other Aggrieved Employees were not provided
4 with meal periods to which they were legally entitled to.

5 46. DEFENDANTS further implemented policies and practices that failed to relieve
6 PLAINTIFF and other Aggrieved Employees of all duties and DEFENDANTS control during
7 unpaid meal periods.

8 47. DEFENDANTS failed to instruct PLAINTIFF and other Aggrieved Employees as to
9 the timing and duty-free nature of meal periods. DEFENDANTS did not have a written meal break
10 policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the
11 Aggrieved Employees can be established by evidence that an employer adopted a uniform corporate
12 break policy that failed to give full effect to California law and the applicable Wage Order
13 requirements. The fact that employees may legally waive meal breaks does not affect this result.
14 *Brinker, supra*, 53 Cal.4th 1004.

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

19 49. Moreover, PLAINTIFF and other Aggrieved Employees who worked shifts of more
20 than ten hours did not receive a second legally compliant thirty (30) minute meal period.

21 50. Despite not providing PLAINTIFF and other Aggrieved Employees with the lawful
22 meal periods to which they were legally entitled, DEFENDANTS did not pay any premiums for
23 these missed meal periods in violation of California law.

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

28 52. PLAINTIFF and other Aggrieved Employees were not adequately informed,

1 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
2 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
3 the taking of duty-free rest periods.

4 53. DEFENDANTS failed to provide any rest periods due to misclassifying non-exempt
5 employees as independent contractors and due to the nature and constraints of PLAINTIFF's and
6 Aggrieved Employees job duties. Although legally entitled to rest periods, PLAINTIFF and
7 Aggrieved Employees were not provided with legally compliant rest periods and were forced to
8 continue working due to their need to complete deliveries in a timely manner and/or meet delivery
9 windows, rotate DEFENDANTS' products at stores, provide status updates to DEFENDANTS
10 regarding delivered product, communicate with DEFENDANTS via phone calls and/or text message
11 and/or complete other related work tasks. As such, any purported rest periods were interrupted, cut
12 short, on duty, and/or late. Based on information and belief, Aggrieved Employees were pressured
13 to complete their work duties according to a designated schedule such that rest breaks were only
14 taken once tasks were completed, and/or as time permitted.

15 54. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
16 lasting longer than ten hours.

17 55. PLAINTIFF and other Aggrieved Employees were never paid a rest period premium
18 for any missed/unlawful rest periods in violation of California law.

19 56. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
20 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
21 minimum and overtime wages.

22 57. DEFENDANTS willfully misclassified PLAINTIFF and continues to willfully
23 misclassify Aggrieved Employees as independent contractors to evade California's minimum wage
24 and overtime laws.

25 58. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all
26 hours worked, resulting in the underpayment of minimum and overtime wages.

27 59. For example, DEFENDANTS suffered and permitted PLAINTIFF and Aggrieved
28 Employees to work off the clock without the payment of wages, as DEFENDANTS failed to record

1 the number of hours worked and failed to instruct PLAINTIFF and other Aggrieved Employees to
2 record their hours worked and further failed to provide any way for them to record their hours
3 worked. PLAINTIFF and other Aggrieved Employees were not compensated for all time worked,
4 including but not limited to, time spent driving between delivery locations, time spent rotating
5 DEFENDANTS' products, time spent driving between locations, time spent driving to and from
6 DEFENDANTS' warehouses, time spent updating DEFENDANTS as to the status of deliveries,
7 time spent communicating with DEFENDANTS regarding deliveries and/or sold and unsold
8 product, and time spent returning product to DEFENDANTS' warehouses.

9 60. As such, PLAINTIFF and other Aggrieved Employees were not paid for all work
10 time. DEFENDANTS were and are required to pay PLAINTIFF and other Aggrieved Employees
11 minimum wages for all time worked. DEFENDANTS failed and continues to fail to ensure that
12 PLAINTIFF and other Aggrieved Employees receive the applicable minimum wage for all hours
13 worked. Instead, DEFENDANTS paid PLAINTIFF a percentage and/or commission based on sold
14 and/or delivered bread product, irrespective of the number of hours it took to complete such delivery
15 and related tasks, thereby depriving Aggrieved Employees of all owed minimum and overtime
16 wages for those that worked more than eight (8) hours in a day or more than forty (40) hours in a
17 week, thereby depriving PLAINTIFF and other Aggrieved Employees of all owed minimum wages,
18 and all owed overtime wages at the regular rate of pay for Aggrieved Employees.

19 61. Moreover, by charging PLAINTIFF and other Aggrieved Employees with penalties
20 for failing to comply with DEFENDANTS rules and delivery time windows, DEFENDANTS
21 deprived PLAINTIFF and other Aggrieved Employees of allowed minimum and overtime wages
22 for all hours worked.

23 62. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
24 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
25 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
26 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
27 required by law, including but not limited to the following records: total daily hours worked,
28 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees

1 began and ended each work period, time records of meal periods, and accurate itemized wage
2 statements.

3 63. DEFENDANTS failed and continue to fail to keep accurate and complete records
4 showing total hours worked by PLAINTIFF and similarly Aggrieved Employees. For example,
5 DEFENDANTS did not instruct Aggrieved Employees to record their hours worked, nor did
6 DEFENDANTS provide any way for Aggrieved Employees to record their hours worked.
7 Moreover, DEFENDANTS further failed, and continue to fail, to record the start and end times of
8 PLAINTIFF's and similarly Aggrieved Employees' owed meal periods.

9 64. **Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432.** Based on
10 information and belief, DEFENDANTS have a uniform policy and/or practice of failing to produce
11 or make available a current or former employee's time, pay, and/or personnel records when
12 requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For
13 example, PLAINTIFF sent a request for payroll and personnel records to DEFENDANTS on March
14 15, 2022. Yet, DEFENDANTS failed to produce the requested records within the time periods
15 delineated by California labor law. Based on information and belief, DEFENDANTS failed and
16 continues to fail to timely produce complete time, pay, and personnel records when requested by
17 other Aggrieved Employees.

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

23 66. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
24 recordkeeping provisions, minimum wages and overtime wages, and business expenses result in
25 separate violations of sections 1198 and 1199.

26 67. **Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
27 Code section 216 by failing to pay PLAINTIFF and Aggrieved Employees for all hours worked and
28 by failing to pay PLAINTIFF and Aggrieved Employees an additional hour of pay for each meal/rest

1 period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries, Inc.*
2 (1995) 31 Cal.App.4th 1137, 1154-1155.

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

11 69. **Unlawful Deductions:** Labor Code section 221 prohibits an employer from
12 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
13 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
14 from PLAINTIFF’s and Aggrieved Employees’ paychecks during the relevant period, by including
15 but not limited to unlawfully deducting or withholding money owed or previously paid for penalties
16 imposed by DEFENDANTS. Such a practice is in violation of including but not limited to, Labor
17 Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section
18 2699.

19 70. **Unreimbursed Business Expenses.** Based on information and belief,
20 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
21 as a direct consequence of the performance of their job duties without providing reimbursement, in
22 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
23 Employees were improperly required to provide and maintain work tools that are supposed to be the
24 responsibility of the employer including but not limited to, cellphone/data plan charges, and costs
25 associated with having to use their personal vehicles, including but not limited to mileage, and/or
26 other tools for work related purposes, and costs of maintaining work uniforms/clothing, costs of face
27 masks, and costs of repairing and/or replacing tools.

28 71. Based on information and belief, DEFENDANTS shifted the costs of doing business

1 onto Aggrieved Employees by requiring them to pay for business expenses, including but not
2 limited to, use of PLAINTIFF and other Aggrieved Employees' cellphone and data usage, vehicle
3 mileage and related expenses, uniform/work clothing maintenance and face masks. For example,
4 based on information and belief, PLAINTIFF used his personal mobile phone to receive and respond
5 to work related messages and/or phone calls. Based on information and belief other Aggrieved
6 Employees used their personal mobile phone to communicate with DEFENDANTS either via phone
7 call and/or text message. PLAINTIFF and other Aggrieved Employees were also required to use
8 their personal vehicle and/or other tools to complete deliveries for DEFENDANTS without
9 reimbursement for these expenses including for mileage, gas, and other costs related to the use of a
10 personal vehicle and/or personal tools. Moreover, PLAINTIFF and other Aggrieved Employees
11 were required to pay for the costs of any repairs for tools provided by DEFENDANTS including
12 any repairs or replacements of trays and dollies. These expenses were in no way reimbursed by
13 DEFENDANTS.

14 72. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
15 Employees were entitled to be reimbursed for all reasonable expenses associated with carrying out
16 DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

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

21 74. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
22 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
23 with Labor Code section 226.

24 75. DEFENDANTS either failed to provide wage statements at all or failed to provide
25 wage statements containing all statutorily required information pursuant to Labor Code section 226.

26 76. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
27 with meal and rest periods that complied with Labor section 226.7, the wage statements
28 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees (if any) failed and continue

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

4 77. To the extent any wage statements were provided, the wage statements failed and
5 continue to fail to indicate the “total hours worked” by PLAINTIFF and other Aggrieved
6 Employees. Failure to list all hours worked on a wage statement, gives rise to an inference of injury
7 under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308,
8 1337).

9 78. Moreover, to the extent and wage statements were provided, they fail to include all
10 gross and net wages earned, fail to include the number of piece-rate units earned and any applicable
11 piece rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail
12 to include any applicable hourly rates in effect during the pay period and the corresponding number
13 of hours worked at each hourly rate, among other things.

14 79. Moreover, based on information and belief, to the extent wage statements were
15 provided, the statements further violate Labor Code section 226(a), by among other things, failing
16 to list the correct name and/or address of the legal entity that is the employer.

17 80. To the extent wage statements were issued by DEFENDANTS, the wage statements
18 failed to list the inclusive dates of the pay period for which the employees is being paid.

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

22 82. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
23 and continue to fail to provide any paid sick leave whatsoever to Aggrieved Employees.

24 83. DEFENDANTS further failed to put them on notice of their paid sick leave rights—
25 or thereby putting their entitlement to sick leave in a Labor Code § 2810.5 notice.

26 84. In addition, DEFENDANTS failed to maintain accurate records of used sick leave
27 and the balance of paid sick leave left to the employee throughout the relevant time period.

28 85. Throughout the relevant time period, DEFENDANTS failed to provide notice of sick

1 leave amount balance left for Aggrieved Employees, and thus affecting their intelligent exercise of
2 their paid sick leave. But for this failure, Aggrieved Employees, who are no longer employed by
3 DEFENDANTS, would have used their paid sick leave at least prior to their respective separation,
4 for as on several occasions thereafter, he or she would have been entitled to use the banked sick
5 leave and earn appropriate compensation.

6 86. DEFENDANTS further failed and continue to fail to comply with Labor Code
7 section 246, by failing to provide Aggrieved Employees with a Labor Code section 226 wage
8 statement, or separate writing containing the amount of paid sick leave available, or paid time off
9 leave an employer provides in lieu of sick leave, at the time it pays wages.

10 87. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
11 documenting the hours worked and paid sick days accrued and used by Aggrieved Employees,
12 permitting the presumption that Aggrieved Employees were entitled to the maximum number of
13 hours accruable.

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

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

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

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

3 **Unlawful Agreements-Unlawful Criminal History Inquiries.**

4 Unlawful Financial and Criminal Background Checks

5 92. Based on information and belief, DEFENDANTS required Aggrieved Employees to
6 agree in writing to unlawful conditions of employment including but not limited to unlawful
7 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
8 violation of Labor Code section 432.5.

9 93. Based on information and belief, DEFENDANTS ordered unlawful financial credit
10 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
11 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
12 employment, in violation of California and Federal law, which results in a further violation of Labor
13 Code section 432.5.

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

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

1 96. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
2 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
3 section 432.5.

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

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

12 99. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
13 condition of employment, DEFENDANTS violated Labor Code section 432.5.

14 Unlawful Inquires into Criminal History

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

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

24 102. Unlawful Release Agreements. Based on further information and belief,
25 DEFENDANTS also required PLAINTIFF to agree in writing to an unlawful release agreement in
26 violation of Labor Code section 432.5. For example, in or around early March 2022,
27 DEFENDANTS required PLAINTIFF to agree in writing to a release agreement that contained
28 unlawful provisions including but not limited to the following provision which provided that:

1 “RELEASOR, for a period of five (5) years from the date hereof, agrees not to disclose any
2 information about RELEASEE that may reasonably be deemed by RELEASEE to either be i)
3 confidential or ii) detrimental to RELEASEE’s brand, image, or reputation if so disclosed.”

4 103. By including the above provision, DEFENDANTS prohibit individuals that sign
5 such an agreement from disclosing DEFENDANTS’ unlawful policies and/or practices in the
6 workplace, as disclosing such unlawful policies and/or practices may reasonably be deemed to be
7 detrimental to DEFENDANTS’ brand, image, or reputation if so disclosed. Such an agreement is in
8 violation of California Government Code section 12964.5. Moreover, in violation of California
9 Government Code section 12964.5, the agreement that DEFENDANTS required PLAINTIFF to
10 sign did not include language substantially similar to the following language as required by
11 California Government Code Section 12964.5: “Nothing in this agreement prevents you from
12 discussing or disclosing information about unlawful acts in the workplace, such as harassment or
13 discrimination or any other conduct that you have reason to believe is unlawful.” This
14 provision/language is not in DEFENDANTS’ agreement despite including a provision that prohibits
15 the disclosure of information that could be detrimental to DEFENDANTS’ image, brand or
16 reputation, and as such prohibits disclosure of unlawful acts in the workplace, and as a result, is in
17 violation of California Government code section 12964.5. By requiring PLAINTIFF to sign an
18 agreement that violated California Government Code section 12964.5, DEFENDANTS also
19 violated California Labor Code section 432.5 by requiring PLAINTIFF to agree in writing to an
20 unlawful term or condition. Based on information and belief, DEFENDANTS required other
21 Aggrieved Employees to agree to a similarly unlawful condition in writing in violation of Labor
22 code section 432.5.

23 104. Moreover, under California Government Code section 12964.5, “An employer
24 offering an employee or former employee an agreement related to that employee's separation from
25 employment as provided in this subdivision shall notify the employee that the employee has a right
26 to consult an attorney regarding the agreement and shall provide the employee with a reasonable
27 time period of not less than five business days in which to do so.” Cal. Gov. Code § 12964.5. Based
28 on information and belief, DEFENDANTS required PLAINTIFF to sign an agreement upon

1 separation of employment without notifying PLAINTIFF of the right to consult with an attorney
2 and without providing a reasonable time frame to do so. In addition to violating Cal. Gov. Code
3 section 12964.5, DEFENDANTS violated Labor Code section 432.5, by requiring PLAINTIFF to
4 agree in writing to an unlawful term or condition.

5 105. As such, Aggrieved Employees continue to be subject to various unlawful provisions
6 as a condition of employment.

7 106. **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.:**
8 DEFENDANTS did not secure workers' compensation for PLAINTIFF and other Aggrieved
9 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715.

10 107. Each violation of each Labor Code section and Wage Order provision results in a
11 separate civil penalty for each Aggrieved Employee.

12 **FIRST CAUSE OF ACTION**

13 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
14 **2698, ET SEQ.**

15 **(On behalf of Aggrieved Employees and the State of California against all Defendants)**

16 108. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

17 109. **Willful Misclassification as an Independent Contractor:** California Labor Code
18 section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor,
19 providing: "[i]t is unlawful for any person or employer to engage in any of the following activities:
20 (1) Willful misclassification of an individual as an independent contractor. (2) Charging an
21 individual who has been willfully misclassified as an independent contractor a fee, or making any
22 deductions from compensation, for any purpose, including for goods, materials, space rental,
23 services, government licenses, repairs, equipment maintenance, or fines arising from the
24 individual's employment where any of the acts described in this paragraph would have violated the
25 law if the individual had not been misclassified." California Labor Code section 226.8(a).

26 110. At all relevant times, DEFENDANTS misclassified PLAINTIFF and other
27 Aggrieved Employees as independent contractors as opposed to employees to evade California
28 wage and hour laws. To qualify as an independent contractor under California law, (1) the worker

1 must be free from the employer's control and direction in the performance of the work, both under
2 the contract for the performance of the work and in fact; (2) the work performed must be outside
3 the usual course of the employer's business; and (3) the worker must not be customarily engaged
4 in an independently established trade, occupation, or business of the same nature as the work he
5 performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903;
6 Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

7 111. Despite DEFENDANTS efforts to evade California wage and hour laws by setting
8 up an alleged contractor scheme, the reality is that PLAINTIFF and other Aggrieved Employees
9 are and were, in fact, at all relevant times, employees according to the law. As explained above:

10 112. (a) PLAINTIFF and other Aggrieved Employees are/were not free from
11 DEFENDANTS' control and direction in the performance of work, both under the contract for the
12 performance of the work and in fact; (b) The work PLAINTIFF and other Aggrieved Employees
13 perform/performed is/was entirely within the usual course of DEFENDANTS' business of selling
14 and distributing DEFENDANTS' bread and baked goods products; and (c) DEFENDANTS' and
15 other aggrieved employees are not/were not customarily engaged in an independently established
16 trade, occupation, or business of the same nature as the work they perform/performed for
17 DEFENDANTS.

18 113. DEFENDANTS misclassified PLAINTIFF and continue to misclassify other
19 Aggrieved Employees as independent contractors to try to evade California labor laws that protect
20 employees, including but not limited to, minimum and overtime wage and sick pay laws, workers'
21 compensation laws, expense reimbursement requirements, record-keeping requirements, wage
22 statement requirements, and requirements as to the timely payment of wages during and upon
23 separation of employment among others described herein.

24 114. **Failure to Keep Accurate Records.** California Labor Code § 1174 requires
25 employers to keep "accurate and complete" payroll records showing, among other things, the hours
26 worked daily by all non-exempt employees. All applicable Wage Orders § 7 similarly requires
27 employers to keep time records reflecting the times during which all owed meal periods were
28 provided each day.

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

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

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

13 **Time and Pay Records**

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

20 118. Section (b) of Labor Code section 226 further requires employers to "afford current
21 and former employees the right to inspect or receive a copy of records pertaining to their
22 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
23 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
24 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with

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

1 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
2 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
3 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
4 the employer. Lab. Code section 226(f).

5 Personnel Records

6 119. In addition to their right to time and pay records, employees, and their
7 representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor
8 Code section 1198.5. This statute applies to both former and current employees. Labor Code section
9 432 further specifies that employers must furnish copies of all employment records bearing the
10 employee’s signature.

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

16 121. Based on information and belief, DEFENDNATS have a uniform policy and/or
17 practice of failing to produce or make available a current or former employee’s time, pay, and/or
18 personnel records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the
19 applicable Wage Order.

20 122. These violations subject DEFENDANTS to penalties under Labor Code sections
21 226, 1198.5, and 2699.

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

27 124. Employers must also provide employees with a second duty-free, uninterrupted thirty
28 (30) minute meal period when an employee works more than (10) hours in a workday, and it must

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

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

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

24 127. DEFENDANTS have a consistent policy and/or practice of not providing lawful
25 meal periods to PLAINTIFF and all Aggrieved Employees and/or providing compensation in lieu
26 thereof. As explained above, PLAINTIFF and other Aggrieved Employees were regularly unable to
27 take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being forced
28 to take late meal periods, interrupted meal periods and/or work through part or all of their meal

1 periods due to DEFENDANTS' misclassification scheme and the nature and constraints of their job
2 duties.

3 128. Moreover, Aggrieved Employees did not receive a timely, uninterrupted second meal
4 period when working shifts over ten (10) hours in a workday.

5 129. DEFENDANTS also failed to pay premiums at the regular rate of pay for
6 missed/otherwise unlawful meal periods in violation of California law.

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

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

26 132. As explained above, due to DEFENDANTS' misclassification scheme, PLAINTIFF
27 and other Aggrieved Employees did not receive compliant, timely 10-minute rest periods for every
28 four (4) hours worked or major fraction thereof. Moreover, any purported rest periods were

1 interrupted, cut short, on duty, and/or late. PLAINTIFF and other Aggrieved Employees were
2 pressured to complete their work such that rest periods were only taken once tasks were
3 completed/as time permitted.

4 133. DEFENDANTS had no policy in place nor instruction as to the taking, timing, or
5 duty-free nature of rest periods.

6 134. Moreover, DEFENDANTS failed to pay a rest period premium at the regular rate of
7 pay to PLAINTIFF and other Aggrieved Employees for each workday in which there was a missed
8 or otherwise unlawful rest period.

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

12 136. **Minimum and Overtime Wage Violations**. California law provides that employees
13 in California must be paid for all hours worked, up to forty (40) hour per week or eight (8) hours
14 per day, at a regular rate that is no less than the mandated minimum wage. *See* Labor Code section
15 1197 and the applicable Wage Order. The minimum wage standard applies to each hour employees
16 worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour
17 worked by an employee is unlawful even if averaging an employee's total pay over all hours worked,
18 paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*
19 (2005) 135 Cal.App.4th 314, 324.

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

26 138. DEFENDANTS willfully misclassified PLAINTIFF and other Aggrieved
27 Employees as independent contractors to evade California's minimum and overtime wage laws.

28 139. As alleged herein, PLAINTIFF and Aggrieved Employees regularly worked

1 minimum and overtime hours for which they were not compensated as required by California law.
2 DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees for all hours
3 worked due to DEFENDANTS' failure to correctly calculate, or record at all, the total number of
4 hours worked by PLAINTIFF and other Aggrieved Employees and not paying proper overtime rates
5 for overtime worked by virtue of same.

6 140. As described above, DEFENDANTS failed to account for and pay for all hours
7 worked including but not limited to, time spent driving between delivery locations, time spent
8 rotating DEFENDANTS' products, time spent driving between locations, time spent driving to and
9 from DEFENDANTS' warehouses, time spent updating DEFENDANTS as to the status of
10 deliveries, time spent communicating with DEFENDANTS regarding deliveries and/or sold and
11 unsold product, and time spent returning product to DEFENDANTS warehouses, resulting in the
12 denial of minimum wages as well as overtime wages owed to PLAINTIFF and those Aggrieved
13 Employees who worked more than eight (8) hours in a day or more than forty hours in a week.

14 141. DEFENDANTS' unlawful policies and practices resulted in unpaid minimum wages,
15 and unpaid overtime wages owed to PLAINTIFF and other Aggrieved Employees that worked more
16 than eight (8) hours in a day or more than forty hours (40) in a week, as well as unpaid double time
17 wages.

18 142. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
19 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
20 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
21 Wage Orders, section 20.

22 143. **Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
23 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
24 wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and
25 Aggrieved Employees of all earned minimum and overtime compensation for all hours worked
26 which resulted in the payment of less than statutorily required wages. DEFENDANTS acted with
27 the intent to deprive them of statutory wages, including, but not limited to, minimum and overtime
28 wages, to which they were entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF

1 and other Aggrieved Employees lower wages than those they were entitled to while purporting that
2 PLAINTIFF and other Aggrieved Employees were properly paid. As a result, the Aggrieved
3 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
4 Labor Code § 2699(f)-(g).

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

14 145. **Business Expense Violations.** California law requires employers to indemnify their
15 employees for all necessary expenditures incurred by the employee in direct consequence of the
16 discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code
17 s. 2802 and all applicable Wage Orders section 9(b). Furthermore, "for purposes of [section 2802],
18 the term 'necessary expenditure or losses' shall include all reasonable costs, including, but not
19 limited to, attorneys' fees incurred by the employee enforcing the rights granted by this section."

20 146. Among other things, under California law, when employees must use their personal
21 cellphones for work-related purposes, the employer must reimburse them for a reasonable
22 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
23 Cal.App.4th 1137, 1140. California law also requires employers to reimburse employees for
24 automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas,
25 and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th

26
27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 554. To show liability, an employee will only need to show that he or she was required to use their
2 personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further,
3 “any contract or agreement, express or implied, made by any employee to waive the benefits of this
4 article or any part thereof, is null and void, and this article shall not deprive any employee or his
5 personal representative of any right or remedy to which he is entitled to under the laws of this State.”
6 *See* Cal. Lab. Code section 2804.

7 147. As described above, PLAINTIFF and other Aggrieved Employees were improperly
8 required to pay for business expenses that are legally the responsibility of the employer.

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

13 149. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
14 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
15 DEFENDANTS’ orders and/or carrying out the duties assigned by DEFENDANTS.

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

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

1 hourly rate. Lab. Code § 226.

2 152. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
3 with meal and rest periods that complied with Labor Code section 226.7, to the extent wage
4 statements were issued by DEFENDANTS (if any), the wage statements failed and continue to fail
5 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
6 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
7 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
8 effect during the pay period and the corresponding number of hours worked at each hourly rate by
9 the employee, in violation of Labor Code section 226(a)(9).

10 153. Moreover, due to violations detailed above, including but not limited to,
11 DEFENDANTS' failure to pay minimum and overtime wages for all hours worked, failure to pay
12 all sick leave, and failure to provide meal and rest break premiums, DEFENDANTS have violated
13 California Labor Code § 226 by willfully failing to furnish PLAINTIFF and other Aggrieved
14 Employees with accurate, itemized wage statements (if any) that listed the earned gross and net
15 wages earned and the correct applicable rates of pay for all hours worked.

16 154. Moreover, to the extent wage statements were issued by DEFENDANTS, the wage
17 statements failed to indicate the earned gross and net wages earned during the pay period, the correct
18 applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFF and other
19 Aggrieved Employees which results in a violation of Labor Code section 226(a). Failure to list all
20 hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section
21 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

22 155. DEFENDANTS' failure to accurately list all hours worked on wage statements
23 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
24 Employees over whether they received all wages owed to them.

25 156. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
26 they could not easily determine whether they received all wages owed to them and whether they
27 were paid for all hours worked.

28 157. Moreover, to the extent wage statements were provided, DEFENDANTS failed to

1 list the inclusive dates of the pay period for which the employee is being paid.

2 158. Separately, and independent of the above allegations, to the extent wage statements
3 were provided to PLAINTIFF and other Aggrieved Employees, the wage statements further violate
4 Labor Code section 226(a), by failing to list the correct name and/or address of the legal entity that
5 is the employer.

6 159. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
7 other Aggrieved Employees with accurate, itemized wage statements.

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

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

19 162. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave laws
20 including, Labor Code section 245-248.5 and 233-234. DEFENDANTS failed and continue to fail
21 to provide any sick leave pay to PLAINTIFF and other Aggrieved Employees.

22 163. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
23 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
24 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
25 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
26 Aggrieved Employees' intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF
27 and other Aggrieved Employees would have used their paid sick leave at least prior to their

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

1 respective separations, for as on several occasions thereafter, he or she would have been entitled to
2 use the banked sick leave and earn appropriate compensation.

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

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

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

13 167. Accordingly, the Aggrieved Employees are entitled to all appropriate relief under the
14 PAGA, the aforementioned code provisions including but not limited to Labor Code section 233
15 and 234, and seek injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by
16 law.

17 168. **Untimely Payment of Final Wages.** California Labor Code section 201(a) provides,
18 in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the
19 time of discharge are due and payable immediately." California Labor Code section 202(a) provides,
20 in relevant part, that "[i]f an employee not having a written contract for a definite period quits his
21 or her employment, his or her wages shall become due and payable not later than 72 hours thereafter,
22 unless the employee has given 72 hours previous notice of his or her intention to quit, in which case
23 the employee is entitled to his or her wages at the time of quitting."

24 169. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
25 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
26 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
27 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
28 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,

1 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

2 170. DEFENDANTS failed to timely pay final wages to PLAINTIFF and other Aggrieved
3 Employees upon separation of employment in violation of Labor Code sections 201-202 and/or did
4 not include all owed vacation pay and/or failed to timely provide final wages with all owed vacation
5 and/or paid time off. Based on information and belief, DEFENDANTS untimely provide final wages
6 to Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-
7 202.

8 171. Moreover, final paychecks, once provided to PLAINTIFF and other Aggrieved
9 Employees did not include all wages owed as they are devoid of, including but not limited to, all
10 owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave
11 and/or paid time off wages.

12 172. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
13 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
14 256.

15 173. **Unlawful Deductions:** Labor Code section 221 prohibits an employer from
16 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
17 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
18 from PLAINTIFF and Aggrieved Employees’ paychecks during the relevant period, by including
19 but not limited to unlawfully deducting or withholding money owed or previously paid for penalties
20 imposed by DEFENDANTS. Such a practice is in violation of including but not limited to, Labor
21 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
22 2699. Each violation results in a separate civil penalty, for each Aggrieved Employee, for each pay
23 period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that
24 “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article,
25 every person who unlawfully withholds wages due any employee in violation of Section 212, 216,
26 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

27 174. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** *Unlawful*
28 *Agreements.* Labor Code section 432.5 provides that “no employer...shall require any employee or

1 applicant for employment to agree, in writing, to any term or condition which is known by such
2 employer...to be prohibited by law.” DEFENDANTS required and continue to require PLAINTIFF
3 and Aggrieved Employees to agree in writing to submit to unlawful criminal and/or financial checks
4 as a condition of obtaining and/or continuing employment. Based on further information and belief,
5 DEFENDANTS also required PLAINTIFF and other Aggrieved Employees to agree to unlawful
6 release agreements in violation of Labor Code section 432.5.

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

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

23 177. DEFENDANTS required PLAINTIFF and other Aggrieved Employees to submit
24 and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining
25 and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

26 178. Based on further information and belief, DEFENDANTS required Aggrieved
27 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
28 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA

1 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
2 requiring applicants and employees to agree in writing to an unlawful provision as a condition of
3 employment.

4 179. Based on further information and belief, DEFENDANTS knew that requiring
5 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
6 condition of obtaining and/or holding employment was unlawful.

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

9 181. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
10 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
11 then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved
12 Employees about arrests not resulting in convictions on its employment application, in violation of
13 California law.

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

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

24 184. Unlawful Release Agreements. Based on further information and belief,
25 DEFENDANTS also required PLAINTIFF to agree in writing to an unlawful release agreement in
26 violation of Labor Code section 432.5. For example, in or around early March 2022,
27 DEFENDANTS required PLAINTIFF to agree in writing to a release agreement that contained
28 unlawful provisions including but not limited to the following provision which provided that:

1 “RELEASOR, for a period of five (5) years from the date hereof, agrees not to disclose any
2 information about RELEASEE that may reasonably be deemed by RELEASEE to either be i)
3 confidential or ii) detrimental to RELEASEE’s brand, image, or reputation if so disclosed.”

4 185. By including the above provision, DEFENDANTS prohibit individuals that sign
5 such an agreement from disclosing DEFENDANTS’ unlawful policies and/or practices in the
6 workplace, as disclosing such unlawful policies and/or practices may reasonably be deemed to be
7 detrimental to DEFENDANTS’ brand, image, or reputation if so disclosed. Such an agreement is in
8 violation of California Government Code section 12964.5. Moreover, in violation of California
9 Government Code section 12964.5, the agreement that DEFENDANTS required PLAINTIFF to
10 sign did not include language substantially similar to the following language as required by
11 California Government Code Section 12964.5: “Nothing in this agreement prevents you from
12 discussing or disclosing information about unlawful acts in the workplace, such as harassment or
13 discrimination or any other conduct that you have reason to believe is unlawful.” This
14 provision/language is not in DEFENDANTS’ agreement despite including a provision that prohibits
15 the disclosure of information that could be detrimental to DEFENDANTS’ image, brand or
16 reputation, and as such prohibits disclosure of unlawful acts in the workplace, and as a result, is in
17 violation of California Government code section 12964.5. By requiring PLAINTIFF to sign an
18 agreement that violated California Government Code section 12964.5, DEFENDANTS also
19 violated California Labor Code section 432.5 by requiring PLAINTIFF to agree in writing to an
20 unlawful term or condition. Based on information and belief, DEFENDANTS required other
21 Aggrieved Employees to agree to a similarly unlawful condition in writing in violation of Labor
22 code section 432.5.

23 186. Moreover, under California Government Code section 12964.5, “An employer
24 offering an employee or former employee an agreement related to that employee's separation from
25 employment as provided in this subdivision shall notify the employee that the employee has a right
26 to consult an attorney regarding the agreement and shall provide the employee with a reasonable
27 time period of not less than five business days in which to do so.” Cal. Gov. Code § 12964.5. Based
28 on information and belief, DEFENDANTS required PLAINTIFF to sign an agreement upon

1 separation of employment without notifying PLAINTIFF of the right to consult with an attorney
2 and without providing a reasonable time frame to do so. In addition to violating Cal. Gov. Code
3 section 12964.5, DEFENDANTS violated Labor Code section 432.5, by requiring PLAINTIFF to
4 agree in writing to an unlawful term or condition.

5 187. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to
6 various unlawful provisions as a condition of employment.

7 188. **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.:**
8 DEFENDANTS did not secure workers' compensation for PLAINTIFF and other Aggrieved
9 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because
10 of DEFENDANTS' violations of those statutes, DEFENDANTS are liable for civil penalties in the
11 amounts specified in California Labor Code section 3700.5 and/or PAGA, for each Aggrieved
12 Employee.

13 189. Under the provisions of PAGA and the above mentioned Labor Code sections,
14 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
15 226.8, 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197,
16 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5, 3700, 3700.5, 3712, and 3715 and all applicable
17 Wage Orders as well as all interpretations of these laws by California Courts and administrative
18 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
19 the following penalties:

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

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

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: April 14, 2023

CROSNER LEGAL, PC

By:

Zuk

Zachary M. Crosner, Esq.

Jamie K. Serb, Esq.

Chad Saunders, Esq.

Attorneys for Plaintiff,

IZAZQUN GARIBAY GONZALEZ

EXHIBIT 1



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January 31, 2023

VIA 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:

CSC - Lawyers Incorporating Service
Agent for Service of Process for:
EARTHGRAINS DISTRIBUTION, LLC
2710 Gateway Oaks Dr. Ste 150n
Sacramento, CA 95833

CSC - Lawyers Incorporating Service
Agent for Service of Process for:
BIMBO BAKERIES USA, INC.
2710 Gateway Oaks Dr. Ste 150n
Sacramento, CA 95833

BIMBO BAKERIES USA, INC.
Attn: Human Resources/ Legal Dept.
255 Business Ctr
Horsham, PA 19044

**EARTHGRAINS DISTRIBUTION,
LLC**

Attn: Human Resources/ Legal Dept
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Agent for Service of Process for:
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**EARTHGRAINS BAKING
COMPANIES, LLC**
Attn: Human Resources/ Legal Dept
255 Business Ctr. Dr.
Horsham, PA 19044

AMENDED NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Bimbo Bakeries USA, Inc.; Earthgrains Distribution, LLC; and Earthgrains Baking Companies, LLC
Date: January 31, 2023
Subject: *Izazqun Garibay Gonzalez v. Bimbo Bakeries USA, Inc. et. al.*
LWDA Case No: LWDA-CM-924928-22

Introduction

This office represents COMPLAINANT, Izazqun Garibay Gonzalez (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: Bimbo Bakeries USA, Inc., Earthgrains Distribution, LLC; and Earthgrains Baking Companies, LLC, hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

At all relevant times, COMPLAINANT was an aggrieved employee as defined in Labor Code §2699(c) (“any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed”). Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all individuals who currently or formerly worked for EMPLOYER in California within one year of the date of COMPLAINANT’s original notice filed on December 16, 2022 (“AGGRIEVED EMPLOYEES”), hereby provides this written amended notice (“AMENDED NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This AMENDED NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via its Agent(s) for Service of Process and/or mailing address as provided to the California Secretary of State. The purpose of this AMENDED NOTICE is to add allegations of EMPLOYER’s additional violations of Labor Code section 432.5.

This AMENDED 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 AMENDED NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This AMENDED NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This AMENDED 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 AMENDED 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. If EMPLOYER intends to cure the alleged violations within the statutory time period set forth in sections 2699 and 2699.3(a), the EMPLOYER shall provide notice including a description of 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 the facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this AMENDED NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-202, 204, 221-223, 226, 226.7, 226.8, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5, 3700, 3700.5, 3712, and 3715, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and 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 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. By reason of their status as joint employers of COMPLAINANT and AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other 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 an employer(s) who violated

COMPLAINANT's and other 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, the 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 and its managing agents own, operate, or otherwise manage companies that produce, sell, and distribute bread and baked goods nationwide including but not limited to in California. EMPLOYER is the largest commercial baking company in the United States and delivers, various bread products including but not limited to bagels, muffins, buns, and sweet baked goods. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT worked for EMPLOYER for approximately seven years through in or around March 2022. COMPLAINANT worked for EMPLOYER delivering bread products to stores in California including but not limited to locations in Wilmington, California and surrounding areas.

COMPLAINANT was paid on a commission basis based on the total bread and/or baked goods distributed/delivered for EMPLOYER. COMPLAINANT was responsible for delivering baked goods produced by EMPLOYER to stores in COMPLAINANT's assigned route/area. Each morning, COMPLAINANT was required to pick up bread products from EMPLOYER's facilities no later than by 5:30 am and was required to distribute the bread products to stores that sell EMPLOYER's bread products. COMPLAINANT was pressured by EMPLOYER to complete deliveries in a timely manner or would face disciplinary measures for failing to distribute bread in the manner required by EMPLOYER. For example, if COMPLAINANT picked up EMPLOYER's bread product after 5:30 am, EMPLOYER charged COMPLAINANT a penalty in the amount of at least \$50 for failing to pick up the product in a timely manner.

COMPLAINANT was also required to scan each product via a handheld device which provided EMPLOYER with information regarding the products distributed by COMPLAINANT including but not limited to the status of deliveries, returns, promotions, and/or invoices. At the end of each day, COMPLAINANT was required to provide these status updates to EMPLOYER.

Additionally, at the end of each day, COMPLAINANT was required to return to EMPLOYER's warehouse to drop off any unsold product and/or product that was not delivered. EMPLOYER pressured COMPLAINANT to minimize the amount of product that was unsold and/or returned to EMPLOYER's warehouses by disciplining COMPLAINANT and other AGGRIEVED EMPLOYEES that returned too much product by charging COMPLAINANT a fee based on the amount of product returned and/or based on the percentage of product returned to EMPLOYER's warehouse. EMPLOYER also threatened to end the work relationship with COMPLAINANT if COMPLAINANT failed to deliver EMPLOYER's bread products in a satisfactory manner and/or if COMPLAINANT's returned product exceeded an amount set by EMPLOYER.

Moreover, EMPLOYER required COMPLAINANT to use his own tools, vehicle, and equipment to deliver EMPLOYER's bread products. Although EMPLOYER provided dolly's trays, and a handheld inventory device, COMPLAINANT was responsible for any lost and/or broken tools and was required to pay for any repairs to tools provided by EMPLOYER. COMPLAINANT was required to provide all other tools including but not limited to a delivery vehicle and was required to pay for the cost of repairing any tools provided by EMPLOYER.

EMPLOYER also required that COMPLAINANT use EMPLOYER's brand name when presenting himself to EMPLOYER's customers/stores by including but not limited to requiring that COMPLAINANT wear a shirt with EMPLOYER's logo when completing deliveries.

EMPLOYER further required that COMPLAINANT abide by rules and policies enforced by EMPLOYER including but not limited to, maintaining an adequate supply of EMPLOYER's products at assigned stores; rotate EMPLOYER's products at store locations to increase sales and/or prevent stale bread products that would be returned; removing stale bread products from assigned store locations in COMPLAINANT's delivery route, and meeting EMPLOYER's guidelines and expectations including but not limited to meeting delivery windows, providing product and invoice updates to EMPLOYER, reducing the amount of product returns, and/or other responsibilities as assigned and imposed by EMPLOYER. At all times, EMPLOYER could terminate COMPLAINANT's work for failure to comply with any of these rules and/or policies.

EMPLOYER applied these same policies and practices to all AGGRIEVED EMPLOYEES.

At all relevant times, COMPLAINANT and similarly AGGRIEVED EMPLOYEES were non-exempt employees of EMPLOYER that were misclassified by EMPLOYER as independent contractors.

Among other things, EMPLOYER (1) willfully misclassified and continues to misclassify COMPLAINANT and similarly AGGRIEVED EMPLOYEES as independent contractors; (2) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES; (3) failed and continues to fail to pay COMPLAINANT and similarly AGGRIEVED EMPLOYEES for all hours worked; (4) failed and continues to fail to pay AGGRIEVED EMPLOYEES at least minimum wages for all hours worked and overtime/regular rates for corresponding work; (5) failed and continues to fail to provide COMPLAINANT and similarly AGGRIEVED EMPLOYEES with proper meal or rest periods, and/or compensate COMPLAINANT and similarly AGGRIEVED EMPLOYEES an additional hour of premium pay 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 similarly AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and similarly 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 similarly AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and similarly AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and similarly AGGRIEVED EMPLOYEES during employment and upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and similarly AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducts illegal criminal and/or financial background checks as a condition of COMPLAINANT's and similarly AGGRIEVED EMPLOYEES' hire and/or continued employment; (13) requires COMPLAINANT and similarly 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 and AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) required and continues to require COMPLAINANT and AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment; and (15) fails to secure workers' compensation. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Willful Misclassification as an Independent Contractor: California Labor Code section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor, providing: "[i]t is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified." California Labor Code section 226.8 (a).

At all relevant times, EMPLOYER misclassified COMPLAINANT and other AGGRIEVED EMPLOYEES as independent contractors as opposed to employees to evade California wage and hour laws. To qualify as an independent contractor under California law, (1) the worker must be free from the employer's control and direction in the performance of the work, both under the contract for the performance of the work and in fact; (2) the work performed must be outside the usual course of the employer's business; and (3) the worker must not be customarily engaged in an independently established trade, occupation, or business of the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

Despite EMPLOYER's efforts to evade California wage and hour laws by setting up an alleged contractor scheme, the reality is that COMPLAINANT and AGGRIEVED EMPLOYEES are and were, in fact, at all relevant times, employees according to the law, in that: (a) COMPLAINANT and other AGGRIEVED EMPLOYEES are/were not free from EMPLOYER's control and direction in the performance of work, both under the contract for the performance of the work and in fact; (b) The work COMPLAINANT and other AGGRIEVED EMPLOYEES perform/performed is/was entirely within the usual course of EMPLOYER's business of selling and distributing EMPLOYER's bread and baked goods products; and (c) COMPLAINANT and other AGGRIEVED EMPLOYEES are not/were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work they perform/performed for EMPLOYER.

For example, as explained above, EMPLOYER implemented rules and policies that COMPLAINANT and other AGGRIEVED EMPLOYEES were required to comply with in order to continue delivering products for EMPLOYER. COMPLAINANT and other AGGRIEVED EMPLOYEES faced disciplinary actions including but not limited to paying penalties imposed by EMPLOYER for failing to comply with EMPLOYER's rules and/or expectations for delivered and sold bread products. Moreover, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to meet delivery windows, pick-up product from EMPLOYER by a particular time each morning, return any unsold product back to EMPLOYER, and provide status updates to EMPLOYER regarding the status of deliveries and report any unsold product. As such, EMPLOYER controlled virtually every aspect of COMPLAINANT's and AGGRIEVED EMPLOYEES' job duties and maintained the right to termination their work based on past and/or unsatisfactory performance. Additionally, COMPLAINANT's and AGGRIEVED EMPLOYEES' work was in the usual course of EMPLOYER's business of delivering and distributing EMPLOYER's bread products to communities in California. As explained in EMPLOYER's website, "As the largest commercial baking company in the U.S., we are proud to deliver our bread, bagels, buns, English muffins and sweet baked goods to every town, city and community in the United States."¹

Additionally, based on information and belief, COMPLAINANT and other AGGRIEVED EMPLOYEES incur/incurred no opportunity for "profit" or "loss"; rather, EMPLOYER managed

¹ See <https://www.bimbobakeriesusa.com/about-us>. Last visited on December 16, 2022.

the business operation, attracted customers or clients, advertised, and obtained customers. COMPLAINANT and other AGGRIEVED EMPLOYEES' investment is/was minor compared to that of EMPLOYER. COMPLAINANT and other AGGRIEVED EMPLOYEES have made no capital investment in any of EMPLOYER's facilities, advertising, maintenance, staffing, or electronic systems. Based on information and belief, AGGRIEVED EMPLOYEES owned no enterprise, exercised no business management skills, and maintained no separate business structures or facilities.

Based on the work relationship described above, there can be no doubt that COMPLAINANT and other AGGRIEVED EMPLOYEES were at all relevant times EMPLOYER's employees – not independent contractors. Thus, EMPLOYER's conduct constitutes an intentional, willful pattern and/or practice of misclassification.

EMPLOYER misclassified and continues to misclassify COMPLAINANT and other AGGRIEVED EMPLOYEES as independent contractors to try to evade California labor laws that protect employees, such as but not limited to, minimum and overtime wage and sick pay laws, workers' compensation laws, expense reimbursement requirements, record-keeping requirements, wage statement requirements, and requirements as to the timely payment of wages during and upon separation of employment.

As part of its misclassification scheme, EMPLOYER has failed and continues to fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements, failed and continues to fail to secure workers' compensation, failed and continues to fail to reimburse expenses, failed and continues to fail to keep accurate and complete payroll records, failed and continues to fail to furnish timely, accurate itemized wage statements, failed and continues to fail to pay all wages due and owing upon separation of employment, and failed and continues to fail to pay all wages owed every pay period, among other labor code violations, described in further detail below.

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 similarly AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER has failed, and continues to fail, to keep accurate and complete payroll records as required by law.

EMPLOYER has failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and similarly AGGRIEVED EMPLOYEES. For example, EMPLOYER did not instruct COMPLAINANT and AGGRIEVED EMPLOYEES to record their hours worked, nor did EMPLOYER provide any way for COMPLAINANT and AGGRIEVED EMPLOYEES to record their hours worked.

EMPLOYER further failed, and continues to fail, to record the start and end times of COMPLAINANT and similarly AGGRIEVED EMPLOYEES' owed meal periods.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and similarly AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable 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 AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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).

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

Based on information and belief, EMPLOYER has a uniform policy and/or practice of failing to produce or make available a current or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER on March 15, 2022. Yet, EMPLOYER failed to produce the requested 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 time, pay, and personnel records when requested by other 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 § 512 (and all applicable IWC Wage Orders), §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.*

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 §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing §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 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 similarly AGGRIEVED EMPLOYEES were and are consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods due to nature and constraints of their job duties.

EMPLOYER willfully misclassified and continues to willfully misclassify COMPLAINANT and similarly AGGRIEVED EMPLOYEES as independent contractors to evade California meal period laws.

COMPLAINANT and other AGGRIEVED EMPLOYEES consistently worked shifts of at least five and one-half hours or more, entitling them to at least one meal period. However, COMPLAINANT and other AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first and second meal periods. EMPLOYER did not provide any form or version of a meal period.

COMPLAINANT and other AGGRIEVED EMPLOYEES were not permitted to take timely, off duty, thirty-minute, uninterrupted meal periods due to EMPLOYER's misclassification, and due to the nature and constraints of COMPLAINANT's and other AGGRIEVED EMPLOYEES' job duties, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods. For example, after five (5) hours of work, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to continue working due to their need to complete deliveries in a timely manner and/or meet delivery windows, rotate EMPLOYER's products at stores, provide status update to EMPLOYER regarding delivered product, communicate with EMPLOYER via phone calls and/or text message and/or complete other related work tasks. As such, COMPLAINANT and other AGGRIEVED EMPLOYEES were not provided with meal periods to which they were legally entitled to.

EMPLOYER further implemented policies and practices that failed to relieve COMPLAINANT and other AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

EMPLOYER failed to instruct COMPLAINANT and other AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the 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.

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 AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, COMPLAINANT and other AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

Despite not providing COMPLAINANT and other AGGRIEVED EMPLOYEES with the lawful meal periods to which they were legally entitled, EMPLOYER did not pay any premiums for these missed meal periods in violation of California law.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, §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, §20. 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.³

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 willfully misclassified and continues to willfully misclassify COMPLAINANT and similarly AGGRIEVED EMPLOYEES as independent contractors to evade California rest period laws.

EMPLOYER did not and does not properly authorize and provide COMPLAINANT and other AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable 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").

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 AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take lawful rest periods per California law.

EMPLOYER failed to provide any rest periods due to misclassifying non-exempt employees as independent contractors and due to the nature and constraints of COMPLAINANT's and AGGRIEVED EMPLOYEES job duties. Although legally entitled to rest periods, COMPLAINANT and AGGRIEVED EMPLOYEES were not provided with legally compliant rest periods and were forced to continue working due to their need to complete deliveries in a timely manner and/or meet delivery windows, rotate EMPLOYER's products at stores, provide status updates to EMPLOYER regarding delivered product, communicate with EMPLOYER via phone calls and/or text message and/or complete other related work tasks. As such, any purported rest periods were interrupted, cut short, on duty, and/or late. Based on information and belief, 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.

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

EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. COMPLAINANT and other AGGRIEVED EMPLOYEES were never paid a rest period premium for any missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code section 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 AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); 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”).

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. Therefore, 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 willfully misclassified COMPLAINANT and continues to willfully misclassify AGGRIEVED EMPLOYEES as independent contractors to evade California's minimum wage laws.

EMPLOYER failed to compensate COMPLAINANT and AGGRIEVED EMPLOYEES for all hours worked, resulting in the underpayment of minimum and overtime wages.

For example, EMPLOYER suffered and permitted COMPLAINANT and AGGRIEVED EMPLOYEES to work off the clock without the payment of wages, as EMPLOYER failed to record the number of hours worked and failed to instruct COMPLAINANT and other AGGRIEVED EMPLOYEES to record their hours worked and further failed to provide any way for them to record their hours worked. COMPLAINANT and other AGGRIEVED EMPLOYEES were not compensated for all time worked, including but not limited to, time spent driving between delivery locations, time spent rotating EMPLOYER's products, time spent driving between locations, time spent driving to and from EMPLOYER's warehouses, time spent updating EMPLOYER as to the status of deliveries, time spent communicating with EMPLOYER regarding deliveries and/or sold and unsold product, and time spent returning product to EMPLOYER's warehouses.

As such, COMPLAINANT and other AGGRIEVED EMPLOYEES were not paid for all work time. EMPLOYER was and is required to pay COMPLAINANT and other AGGRIEVED EMPLOYEES minimum wages for all time worked. EMPLOYER failed and continues to fail to ensure that COMPLAINANT and other AGGRIEVED EMPLOYEES receive the applicable minimum wage for all hours worked. Instead, EMPLOYER paid COMPLAINANT a percentage and/or commission based on sold and/or delivered bread product, thereby depriving AGGRIEVED EMPLOYEES of all owed minimum wages, and all owed overtime wages at the regular rate of pay for AGGRIEVED EMPLOYEES that worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Moreover, by charging COMPLAINANT and other AGGRIEVED EMPLOYEES with penalties for failing to comply with EMPLOYER's rules and delivery time windows, EMPLOYER deprived COMPLAINANT and other AGGRIEVED EMPLOYEES of allowed minimum and overtime wages for all hours worked.

EMPLOYER violated sections 558, 1194, 1194.2, and 1197 by failing to compensate COMPLAINANT and other AGGRIEVED EMPLOYEES for all hours worked at the legal minimum wage rate. These violations subject employer to civil penalties under Labor Code Sections 1197.1, 1194.2, and all applicable Wage Orders §20, and Labor Code section 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.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; 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.*

EMPLOYER willfully misclassified COMPLAINANT and continues to willfully misclassify AGGRIEVED EMPLOYEES as independent contractors to evade California's overtime wage laws.

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

Namely, as described above, EMPLOYER failed to account for and pay for all hours worked including but not limited to, time spent driving between delivery locations, time spent rotating EMPLOYER's products, time spent driving between locations, time spent driving to and from EMPLOYER's warehouses, time spent updating EMPLOYER as to the status of deliveries, time spent communicating with EMPLOYER regarding deliveries and/or sold and unsold product, and time spent returning product to EMPLOYER's warehouses, resulting in the denial of minimum wages as well as overtime wages owed to COMPLAINANT and those AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week. Instead, EMPLOYER paid COMPLAINANT and other AGGRIEVED EMPLOYEES a percentage and/or commission based on sold and/or delivered bread products, irrespective of the

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

number of hours it took to complete such delivery and related tasks, thereby depriving AGGRIEVED EMPLOYEES of all owed minimum and overtime wages for those that worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice 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.

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 Wage Orders, §20. 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.⁶

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

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order, §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").

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.

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and other AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to use of COMPLAINANT and other AGGRIEVED EMPLOYEES’ cellphone and data usage, vehicle mileage and related expenses, uniform/work clothing maintenance and face masks. For example, based on information and belief, COMPLAINANT used his personal mobile phone to receive and respond to work related messages and/or phone calls. Based on information and belief other AGGRIEVED EMPLOYEES use their personal mobile phone to communicate with EMPLOYER either via phone call and/or text message. COMPLAINANT and other AGGRIEVED EMPLOYEES were also required to use their personal vehicle and/or other tools to complete deliveries for EMPLOYER without reimbursement for these expenses including for mileage, gas, and other costs related to the use of a personal vehicle and/or personal tools. Moreover, COMPLAINANT and other AGGRIEVED EMPLOYEES were required to pay for the costs of any repairs for tools provided by EMPLOYER including any repairs or replacements of trays and dollies. These expenses were in no way reimbursed by EMPLOYER.

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

COMPLAINANT and other AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cellphone/data plan charges, and costs associated with having to use their personal vehicles, including but not limited to mileage, and/or other tools for work related purposes, and costs of maintaining work uniforms/clothing, costs of face masks, and costs of repairing and/or replacing tools.

EMPLOYERS’ failure to provide COMPLAINANT and other AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and other AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Refusal to Make Payment: Labor Code § 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 § 216 by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all AGGRIEVED EMPLOYEES an additional hour of pay for each meal 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 § 225.5. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

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

EMPLOYER either failed/fails to provide wage statements at all or failed/fails to provide wage statements containing all statutorily required information pursuant to Labor Code section 226.

As EMPLOYER failed to provide COMPLAINANT and AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, to the extent wage statements were provided, the wage statements 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).

To the extent any wage statements were provided, the wage statements failed and continue to fail to indicate the “total hours worked” by COMPLAINANT and other AGGRIEVED EMPLOYEES. 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). Moreover, to the extent wage statements were provided, they fail to include all gross and net wages earned, fail to include the number of piece-rate units earned and any applicable piece rate pay, fail to include all deductions, fail to include the inclusive dates of the pay period, fail to include any

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

applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, among other things.

In addition, because of the violations detailed above, including not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

Moreover, based on information and belief, to the extent wage statements were provided, the statements 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.

To the extent wage statements were issued by EMPLOYER, the wage statements failed to list the inclusive dates of the pay period for which the AGGRIEVED EMPLOYEE is being paid.

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 AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and other AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

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

These violations subject EMPLOYER to civil penalties under Labor Code § 226. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.⁸

Standard Conditions of Labor Violations: Together, Labor Code §§ 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 with respect to meal periods, rest periods, recordkeeping provisions, minimum wages, overtime wages, 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.

Violation of California Labor Code §§ 245-248.5: EMPLOYER failed and continues to fail to provide any paid sick leave whatsoever to COMPLAINANT and other AGGRIEVED EMPLOYEES.

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

EMPLOYER further failed to put COMPLAINANT and AGGRIEVED EMPLOYEES on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code § 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 employee throughout the relevant time period.

Throughout the relevant time period, EMPLOYER failed to provide notice of sick leave amount balance left for AGGRIEVED EMPLOYEES, and thus affecting their intelligent exercise of their paid sick leave.

But for this failure, AGGRIEVED EMPLOYEES, who are no longer employed by EMPLOYER, would have used their paid sick leave at least prior to their respective separation, 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 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 AGGRIEVED EMPLOYEES, permitting the presumption that AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable.

EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide 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 and was not as a result of its failure to properly institute a paid sick leave program.

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 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.

Statutory Wage Violations: California 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 AGGRIEVED EMPLOYEES minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages 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 all AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from COMPLAINANT's and AGGRIEVED EMPLOYEES' paychecks during the relevant period, by including but not limited to unlawfully deducting or withholding money owed or previously paid for penalties imposed by EMPLOYER. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a separate civil penalty, for each AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. 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 Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee").

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 failing to compensate COMPLAINANT and other AGGRIEVED EMPLOYEES twice during each calendar month and/or by, including but not limited to, failing to pay COMPLAINANT and other 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 (including minimum and overtime wages), and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code § 210. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

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

Upon separation of employment, COMPLAINANT and 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, 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.

EMPLOYER has violated the above-referenced California Labor Code provisions, 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 AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

These violations subject EMPLOYER to civil penalties under Labor Code section 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

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

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”).

employer...to be prohibited by law.” Based on information and belief, EMPLOYER required 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. Based on further information and belief, EMPLOYER also required COMPLAINANT and other AGGRIEVED EMPLOYEES to agree to unlawful release agreements 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 AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required 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 required 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 AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

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

Based on further information and belief, EMPLOYER also required COMPLAINANT to agree in writing to an unlawful release agreement in violation of Labor Code section 432.5. For example, in or around early March 2022, EMPLOYER required COMPLAINANT to agree in writing to a release agreement that contained unlawful provisions including the but not limited to the following provision which provided that: “RELEASOR, for a period of five (5) years from the date hereof, agrees not to disclose any information about RELEASEE that may reasonably be deemed by RELEASEE to either be i) confidential or ii) detrimental to RELEASEE’s brand, image, or reputation if so disclosed.”

By including the above provision, EMPLOYER prohibits individuals that sign such an agreement from disclosing EMPLOYER’s unlawful policies and/or practices in the workplace, as disclosing such unlawful policies and/or practices may reasonably be deemed to be detrimental to EMPLOYER’s brand, image, or reputation if so disclosed. Such an agreement is in violation of California Government Code section 12964.5. Moreover, in violation of California Government Code section 12964.5, the agreement that EMPLOYER required COMPLAINANT to sign did not include language substantially similar to the following language as required by California Government Code Section 12964.5: “Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.” This provision/language is not in EMPLOYER’s agreement despite including a provision that prohibits the disclosure of information that could be detrimental to EMPLOYER’s image, brand or reputation, and as such prohibits disclosure of unlawful acts in the workplace, and as a result, is in violation of California Government code section 12964.5. By requiring COMPLAINANT to sign an agreement that violated California Government Code section 12964.5, EMPLOYER also violated California Labor Code section 432.5 by requiring COMPLAINANT to agree in writing to an unlawful term or condition. Based on information and belief, EMPLOYER required other AGGRIEVED EMPLOYEES to agree to a similarly unlawful condition in writing in violation of Labor code section 432.5.

Moreover, under California Government Code section 12964.5, “An employer offering an employee or former employee an agreement related to that employee's separation from employment as provided in this subdivision shall notify the employee that the employee has a right to consult an attorney regarding the agreement and shall provide the employee with a reasonable time period of not less than five business days in which to do so.” Cal. Gov. Code § 12964.5. Based on information and belief, EMPLOYER required COMPLAINANT to sign an agreement upon separation of employment without notifying COMPLAINANT of the right to consult with an attorney and without providing a reasonable time frame to do so. In addition to violating Cal. Gov. Code section 12964.5, EMPLOYER violated Labor Code section 432.5, by requiring COMPLAINANT to agree in writing to an unlawful term or condition.

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 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 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 AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.:

EMPLOYER did not secure workers’ compensation for COMPLAINANT and other AGGRIEVED EMPLOYEES, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because of EMPLOYER’s violations of those statutes, EMPLOYER is liable for civil penalties in the amounts specified in California Labor Code section 3700.5 and/or PAGA, for each AGGRIEVED EMPLOYEE.

Conclusion

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. COMPLAINANT’s NOTICE and AMENDED 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 AMENDED NOTICE is to satisfy the requirement created by Labor Code §§ 2699, 2699.3, 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.

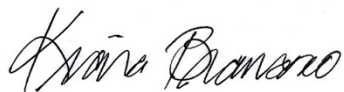
If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all other AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of this AMENDED 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 cursive script that reads "Kiara Bramasco".

Kiara Bramasco, Esq.
CROSNER LEGAL, PC

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At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

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

on the interested parties in this action as follows:

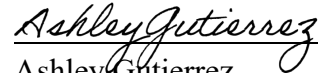
BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine and the transmission was reported as complete and without error.

BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service List as set forth herein. I caused an envelope containing the documents to be placed for collection and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s ordinary business practices. I am readily familiar with our business practices and the business practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope, with postage paid, and deposited with a post office, mail box, sub-post office, substation, mail chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal Service or an affiliate thereof, at or near Phoenix, Arizona.

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

4 Executed on April 14, 2023, at Los Angeles, California.

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6 Ashley Gutierrez

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PROOF OF SERVICE

SERVICE LIST

Izazqun Gonzalez v. Bimbo Bakeries USA Inc. et al.
Superior Court County of Riverside Case No. CVRI2300948

Joseph A. Govea

Attorneys for Defendant

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