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7 Attorneys for Plaintiff, JEFFREY REYES
8 As an individual and on behalf of all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12 JEFFREY REYES, as an individual on
behalf of himself and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 v.

16 THE YERBA MATE CO., LLC, a Delaware
17 Limited Liability Company; GUAYAKI
18 SUSTAINABLE RAINFOREST
19 PRODUCTS, INC., a California
Corporation; and DOES 1-100, inclusive,

20 Defendants.
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Case No.: 34-2022-00331592

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

1 Plaintiff, JEFFREY REYES (“PLAINTIFF”), an individual on behalf of himself and all
2 other similarly situated Class Members (as defined below) and Aggrieved Employees (defined
3 below) hereby files this First Amended Complaint against Defendants THE YERBA MATE CO.,
4 LLC, a Delaware Limited Liability Company; GUAYAKI SUSTAINABLE RAINFOREST
5 PRODUCTS, INC., a California Corporation; and DOES 1-100, inclusive, (collectively referred to
6 herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

7 **JURISDICTION AND VENUE**

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

13 **THE PARTIES**

14 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
15 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
16 in the State of California as a non-exempt employee for approximately three years through in or
17 around January 2022.

18 3. PLAINTIFF worked for DEFENDANTS as delivery route driver and/or similar
19 title(s). PLAINTIFF reported to DEFENDANTS offices and/or locations in San Francisco and
20 Sebastopol, California and completed delivery routes in various cities including but not limited to
21 in Sacramento, San Francisco, and San Jose, California.

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

25 5. Defendant GUAYAKI SUSTAINABLE RAINFOREST PRODUCTS, INC., is a
26 California Corporation that, at all relevant times, was authorized to do business within the State of
27 California and is doing business in the State of California.

28 6. DEFENDANTS own, operate, or otherwise manage beverage companies that make

1 and distribute organic beverages and/or beverage products including but not limited to tea leaves,
2 tea bags, and bottled beverages. DEFENDANTS own, operate or otherwise manages several plants,
3 facilities, and/or locations in California including but not limited to facilities in San Francisco,
4 California and Sebastopol, California. DEFENDANTS sell beverage products through various
5 markets, convenience stores and/or vendors throughout California.

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

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

22 **JOINT LIABILITY**

23 9. Under California law, the definition of the terms “to employ” are broadly construed
24 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
25 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
26 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
27 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
28 was to reach situations in which multiple entities control different aspects of the employment

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

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

19 11. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
21 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
22 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
23 Employees to these same policies and practices regardless of the location(s) where they worked.
24 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
25 and financial control, in DEFENDANTS’ companies, (2) DEFENDANTS utilize common
26 management, who have control over the day-to-day operations and employment matters, including
27 the power to hire and fire, set schedules, issue employee policies, and determine rates of
28 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and

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

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

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

27 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
28 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,

1 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
2 the Class Members and Aggrieved Employees' employment, including the instrumentality that
3 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

4 15. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
5 control over, applied the same policies and practices, and engaged in the same acts and omissions
6 with regard to the other Class Members and Aggrieved Employees.

7 **CLASS ALLEGATIONS**

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

11 All current and former non-exempt employees that worked either
12 directly or via a staffing agency for any of the DEFENDANTS at any
13 location in California at any time within the four years prior to the
14 filing of the initial Complaint ("Class Period").

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

19 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
20 because common questions of law and fact predominate over individual issues.
21 Common questions include, but are not limited to, the following: (1) whether
22 DEFENDANTS understated hours worked and failed to pay all amounts due to
23 PLAINTIFF and the Class Members for wages earned, including minimum and
24 overtime wages, under California law; (2) whether DEFENDANTS provided
25 PLAINTIFF and the Class Members with all meal periods or premium payments
26 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
27 provided PLAINTIFF and the Class Members with all rest periods or premium
28 payments in lieu thereof, in compliance with California law; (4) whether

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

- 9 c. Ascertainable Class. The proposed Class is ascertainable as members can be
10 identified and located using information in DEFENDANTS' business, payroll
11 and personnel records.
- 12 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
13 PLAINTIFF suffered a similar injury as members of the Class as a result of
14 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
15 and pay all owed minimum and overtime wages, failure to provide proper meal
16 periods and rest periods or premium compensation in lieu thereof, failure to
17 provide accurate wage statements, failure to reimburse business expenses, and
18 failure to timely pay all wages due upon separation of employment.
- 19 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
20 Class Members. PLAINTIFF has no interests adverse to the interests of the other
21 Class Members. Counsel who represent PLAINTIFF are competent and
22 experienced in litigating similar class action cases and are California lawyers in
23 good standing. Counsel for PLAINTIFF have the experience and resources to
24 vigorously prosecute this case.
- 25 f. Superiority. A class action is superior to other available means for the fair and
26 efficient adjudication of this controversy since individual joinder of all members
27 of the class is impractical. Class action treatment will permit a large number of
28 similarly situated persons to prosecute their common claims in a single forum

1 simultaneously, efficiently, and without the unnecessary duplication of effort
2 and expense that numerous individual actions would engender. Furthermore, as
3 the damages suffered by each individual member of the Class may be relatively
4 small, the expenses and burden of individual litigation would make it difficult
5 or impossible for individual members of the Class to redress the wrongs done to
6 them, while an important public interest will be served by addressing the matter
7 as a class action. The cost to the court system of adjudication of such
8 individualized litigation would be substantial. Individualized litigation would
9 also present the potential for inconsistent or contradictory judgments. Finally,
10 the alternative of filing a claim with the California Labor Commissioner is not
11 superior, given the lack of discovery in such proceedings, the fact that there are
12 fewer available remedies, and the losing party has the right to a trial de novo in
13 the Superior Court.

14 **FACTUAL AND LEGAL ALLEGATIONS**

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

19 18. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
20 PLAINTIFF worked for DEFENDANTS as a delivery route driver and/or similar title(s) with routes
21 in various cities including but not limited to San Francisco, San Jose, and Sacramento, California.
22 PLAINTIFF was employed by DEFENDANTS for approximately three years through in or around
23 January 2022. PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days
24 per week. At times, PLAINTIFF worked twelve (12) hours or more per shift.

25 19. During the relevant period, PLAINTIFF was a non-exempt employee that was paid
26 on an hourly basis for time counted by DEFENDANTS as hours worked.

27 20. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
28 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the

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

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

13 22. Based on information and belief, Class Members and Aggrieved Employees were
14 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
15 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
16 the clock work policies and/or practices. For example, at times PLAINTIFF was required to
17 complete work tasks after clocking out of work, including but not limited to completing deliveries
18 and/or tasks related to completing deliveries as DEFENDANTS did not want PLAINTIFF to
19 continue working overtime hours. As such, PLAINTIFF was at times, forced to complete his work
20 tasks off-the-clock in order to avoid and/or reduce the number of recorded overtime hours.
21 DEFENDANTS knew that the assigned workload would require PLAINTIFF to work well over
22 eight hours in a shift and knew when PLAINTIFF worked off-the-clock in order to complete
23 assigned deliveries yet failed to pay PLAINTIFF for all hours worked.

24 23. Moreover, PLAINTIFF regularly received work-related communications from
25 management members after completing a scheduled shift and/or on his days off. PLAINTIFF was
26 not paid for time spent responding to such work-related texts, calls, and/or communications resulting
27 in the underpayment of wages owed to PLAINTIFF and other Class Members and Aggrieved
28 Employees.

1 24. Based on information and belief, DEFENDANTS required Class Members and
2 Aggrieved Employees to undergo security checks and/or temperature screenings prior to entering
3 DEFENDANTS' locations and/or facilities, resulting in uncompensated work time, and the
4 underpayment of wages owed to Class Members and Aggrieved Employees, in violation of
5 California's minimum wage laws.

6 25. Based on information and belief, Class Members and Aggrieved Employees were
7 required to perform other off-the-clock work for which they were not compensated. Based on
8 information and belief, before starting a shift and/or clocking in for a shift, Class Members and
9 Aggrieved Employees were required to perform work off-the-clock including but not limited to pre-
10 trip inspections and/or review route and/or delivery information, and/or complete other work tasks
11 before clocking in for a shift. This work time was completed off-the-clock/outside of the scheduled
12 shift and was uncompensated resulting in unpaid wages owed to Class Members and Aggrieved
13 Employees in violation of California's minimum wage and overtime laws.

14 26. Based on information and belief, at times, DEFENDANTS' electronic employee
15 time-keeping system and/or application (on employee's personal phone) malfunctioned such that
16 Class Members and Aggrieved Employees were required to either reinitiate and/or otherwise
17 troubleshoot the system prior to being able to clock in and/or were unable to clock in at all for the
18 start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the
19 underpayment of wages owed to Class Members and Aggrieved Employees. Based on information
20 and belief, Class Members and Aggrieved Employees experienced the same issues when clocking
21 out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was
22 not recorded and not compensated and resulted in unpaid wages owed to Class Members and
23 Aggrieved Employees.

24 27. Based on information and belief, DEFENDANTS failed to pay Class Members and
25 Aggrieved Employees for time they were required to spend completing orientation, policy
26 questionnaires, training, obtaining certifications, completing required classes and/or testing, and/or
27 time spent completing the onboarding process including but not limited to reviewing various
28 documents and policies provided by DEFEDANTS. Based on information and belief, this work time

1 was completed off-the-clock and was not compensated.

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

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

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

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

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

27 33. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
28 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to

1 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
2 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
3 Based on information and belief, Class Members and Aggrieved Employees were consistently
4 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
5 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
6 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
7 pressuring them to take non-compliant meal periods or skip meal periods completely. For example,
8 PLAINTIFF was frequently pressured to complete deliveries within specified time windows and/or
9 complete deliveries and/or routes faster. Due to the pressure to complete assigned worked duties,
10 PLAINTIFF was unable to take uninterrupted meal periods. As such, PLAINTIFF would often eat
11 his meals and/or take purported meal periods while driving between delivery locations, and/or would
12 regularly take late meal periods in order to complete his assigned deliveries and/or meet delivery
13 time windows. Moreover, PLAINTIFF frequently received work-related calls during his purported
14 meal periods and was required to respond to such work-related calls, texts, emails, and/or
15 communications from other drivers, management, vendors, and/or clients.

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

21 35. Based on information and belief, DEFENDANTS implemented policies and/or
22 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
23 DEFENDANTS' control during unpaid meal periods. For example, based on information and belief,
24 Class Members and Aggrieved Employees were required to remain tethered to their worksites and/or
25 in immediate physical proximity to their assigned vehicles and/or were required to monitor work
26 communication devices and respond to work-related communications during unpaid meal periods.
27 As such, PLAINTIFF and other Class Members and Aggrieved Employees were not relieved of all
28 duties during unpaid meal periods.

1 36. Based on information and belief, DEFENDANTS required Class Members and
2 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
3 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
4 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
5 unaccounted pre-shift off-the-clock work.

6 37. Based on information and belief, despite DEFENDANTS' failure to provide lawful
7 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
8 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
9 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
10 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
11 Members and Aggrieved Employees did not receive lawful meal periods.

12 38. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
13 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
14 compliant thirty (30) minute second meal period. For example, when PLAINTIFF worked more
15 than ten hours in a shift, PLAINTIFF was not provided with any version of a second meal period.

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

20 40. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
21 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
22 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
23 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
24 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
25 as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th
26 58.

27 41. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which

1 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
2 Employees, in violation of California's meal period laws.

3 42. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
4 Employees, an additional hour of wages at their respective regular rates of compensation for each
5 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
6 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
7 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
8 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
9 the regular rate or compensation for purposes of calculating the owed meal period premium.

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

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

18 45. Based on information and belief, DEFENDANTS did not have a have a compliant
19 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
20 practice. For example, PLAINTIFF rarely (if ever) received a legally compliant rest period or any
21 form of a rest period. PLAINTIFF was pressured to complete his assigned deliveries and complete
22 his delivery routes and was not afforded with the opportunity to take rest periods. Moreover,
23 PLAINTIFF was required to be responsive to work-related communications, calls, texts, and/or
24 emails throughout his shift including but not limited to during any purported rest periods.

25 46. Based on information and belief, Class Members and Aggrieved Employees' rest
26 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
27 understaffing, the nature and constraints of their job duties, and/or due to commentary from
28 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-

1 compliant rest periods.

2 47. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
3 lasting longer than ten hours. For example, when PLAINTIFF worked more than ten hours in a shift,
4 PLAINTIFF was not provided with any version of a third rest period.

5 48. Based on information and belief, DEFENDANTS implemented policies and/or
6 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
7 all duties and DEFENDANTS' control during rest periods.

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

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

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

27 52. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
28 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the

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

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

11 54. Based on information and belief, wage statements issued by DEFENDANTS failed
12 to list all applicable hourly rates in effect during the pay period and the corresponding number of
13 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
14 Based on information and belief, at times, DEFENDANTS paid Class Members and Aggrieved
15 Employees multiple base rates of pay but failed to incorporate the multiple base rates into the regular
16 rate of pay used to calculate the owed overtime rate, thereby failing to display an accurate overtime
17 rate, in violation of Labor Code section 226(a), including but not limited to, section 226(a)(9).

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

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

24 57. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
25 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
26 required information. As such, DEFENDANTS violated Labor Code section 226.

27 58. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved

1 Employees all wages that were due and owing upon termination or resignation. Based on
2 information and belief, DEFENDANTS untimely provide final wages to Class Members and
3 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

4 59. Upon separation of employment, PLAINTIFF's and Class Members and Aggrieved
5 Employees' final paychecks were not timely provided and/or were not timely provided with all owed
6 vacation pay and/or paid time off. Based on information and belief, PLAINTIFF had to wait
7 approximately one week to receive his final wages. Moreover, PLAINTIFF's and Class Members
8 and Aggrieved Employees' final paychecks, once provided, did not include all wages owed as they
9 were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium
10 wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued
11 rates.

12 60. These violations subject DEFENDANTS to civil penalties under Labor Code section
13 203, 210, and/or 256.

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

20 62. Based on information and belief, DEFENDANTS shifted the costs of doing business
21 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
22 including but not limited to, the uniforms, face masks, and/or the use of Class Members and
23 Aggrieved Employees' personal mobile phone and data usage for work related purposes such as to
24 receive and respond to work related messages, emails, and/or phone calls. For example, PLAINTIFF
25 was required to use his personal phone to respond to work-related communications. PLAINTIFF
26 was also required to download a timekeeping application on his phone which DEFENDANTS
27 required Class Members and Aggrieved Employees to use to clock in and out of shifts. Based on
28 information and belief, DEFENDANTS did not fully reimburse these expenses.

1 63. Based on information and belief, DEFENDANTS regularly failed to fully reimburse
2 and indemnify Class Members and Aggrieved Employees for these business expenses including but
3 not limited to the cost of using their personal phone for work related purposes and/or the cost of
4 purchasing and/or maintaining work uniforms/clothing and/or face masks. Pursuant to California
5 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
6 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
7 and/or carrying out the duties assigned by DEFENDANTS.

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

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

15 **FIRST CAUSE OF ACTION**

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

18 66. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

1 wages.

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

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

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

13 **SECOND CAUSE OF ACTION**

14 **Recovery of Unpaid Overtime Wages**
15 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

75. Based on information and belief, DEFENDANTS failed to pay twice Class

1 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
2 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
3 violation of California's overtime laws.

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

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

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

15 **THIRD CAUSE OF ACTION**

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

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

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

1 done so.

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

6 82. As explained above, PLAINTIFF and other Class Members were consistently unable
7 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
8 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
9 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
10 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
11 completely.

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

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

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

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

27 87. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
28 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day

1 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
2 all in an amount to be proved at trial.

3 **FOURTH CAUSE OF ACTION**

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

5 88. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

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

26 92. Based on information and belief, DEFENDANTS implemented policies and/or
27 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
28 control during rest periods. Based on further information and belief, Class Members were pressured

1 to complete their work duties according to a designated schedule such that rest periods were only
2 taken once tasks were completed, and/or as time permitted.

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

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

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

16 **FIFTH CAUSE OF ACTION**

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

18 96. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

1 shown on the itemized statement, (8) the name and address of the
2 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.

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

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

22 100. As explained above, wage statements issued by DEFENDANTS failed to list the
23 "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,
24 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
25 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
26 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
27 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
28

1 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
2 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

11 104. DEFENDANTS' failure to accurately list all hours worked on all wage statements
12 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
13 Members over whether they received all wages owed to them.

14 105. As a result, PLAINTIFF and other Class Members have suffered injury as they could
15 not easily determine whether they received all wages owed to them and whether they were paid for
16 all hours worked.

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

20 107. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
21 Class Members with accurate, itemized wage statements.

22 108. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
23 have suffered injury. The absence of accurate information on their wage statements has prevented
24 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
25 mathematical computations to determine the amount of wages owed, and will cause difficulty and
26 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
27 submission of inaccurate information about wages and amounts deducted from wages to state and
28 federal government agencies. As a result, PLAINTIFF and Class Members are required to

1 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
2 and pay records than if DEFENDANT had complied with its legal obligations.

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

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

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

18 **SIXTH CAUSE OF ACTION**

19 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 20 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

21 112. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

25 114. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
26 employee not having a written contract for a definite period quits his or her employment, his or her
27 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
28 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."

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

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

10 **SEVENTH CAUSE OF ACTION**
11 **Failure to Reimburse Business Expenses**
12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

13 117. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

20 119. 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. To show liability, an employee will only need to show that he or she was
24 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
25 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
26 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
27 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

28 120. As described above, PLAINTIFF and the Class Members were improperly required
to pay for business expenses that are legally the responsibility of the employer.

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

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **Unfair Competition**

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

14 124. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

126. Due to DEFENDANTS' unfair and unlawful business practices in violation of the

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

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

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

17 129. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
18 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
19 by law.

20 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

27 136. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
28 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California

1 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
2 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
3 applicable Wage Orders.

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

10 138. Additionally, DEFENDANTS have violated the following Labor Code sections and
11 provisions of the applicable Wage Order as to the Aggrieved Employees.

12 **Record Keeping Violations**

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

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

25 141. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
26 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
27 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
28 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and

1 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
2 period during which the referenced statutes and Wage Order provisions were violated.¹

3 **Standard Conditions of Labor Violations**

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

11 **Refusal to Make Payment**

12 143. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
13 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
14 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
15 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
16 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
17 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
18 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
19 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

20 **Unlawful Deductions**

21 144. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
22

23 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
24 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
25 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
26 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).

27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 an employee any part of wages theretofore paid by said employer to said employee.” Based on
2 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees’
3 paychecks during the relevant period, by including but not limited to unlawfully deducting wages
4 paid in previous pay periods. Such a practice is in violation of including but not limited to, Labor
5 Code Sections 221-222 which subject DEFENDANTS to civil penalties under Labor Code Section
6 2699.

7 **Statutory Wage Violations**

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

19 **Sick Leave Violations**

20 146. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
21 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
22 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
23 DEFENDANTS’ failure to account for actual hours worked (as a result of the rounding/automatic
24 deduction policies and practices for meal periods and/or shift start and end times/other required off-
25 the-clock work including but not limited to work completed during unpaid meal periods) and by
26 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
27 not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate
28 compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

1 147. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
2 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
3 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
4 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
5 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

10 149. 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 PLAINTIFF and all
12 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
13 were entitled to the maximum number of hours accruable.

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

19 151. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

20 152. On information and belief, PLAINTIFF alleges that all of these practices were
21 experienced and continue to be experienced by other Aggrieved Employees.

22 153. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
23 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
24 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

26 154. Labor Code § 248.2 provides that all employers with 26 or more employees are
27 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
28 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based

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

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

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

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

17 **Unlawful Inquiries into Salary History**

18 157. Labor code section 432.3 provides in part "(b) An employer shall not, orally or in
19 writing, personally or through an agent, seek salary history information, including compensation
20 and benefits, about an applicant for employment." Based on information and belief, DEFENDANTS
21 have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal their salary
22 history when applying for employment with DEFENDANTS, in violation of Labor Code section
23 432.3.

24 158. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
25 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
26 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
27 obtaining employment with DEFENDANTS, in violation of California law.

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

1 Unlawful Agreements

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

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

20 161. Based on information and belief, DEFENDANTS ordered unlawful financial credit
21 checks on Aggrieved Employees, in violation of labor code section 1024.5, and required aggrieved
22 employees to provide ongoing written consent to the unlawful credit checks as a condition of
23 employment, in violation of California and Federal law, which results in a further violation of labor
24 code section 432.5.

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

28 163. Based on information and belief, DEFENDANTS required Aggrieved Employees to

1 agree in writing to a background check which failed to abide by the requirements set forth in Cal
2 civil code section 1786, *et seq.*, and 15 U.S.C. Section 1681, *et seq.*, including but not limited to by
3 failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all),
4 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
5 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
6 failing to provide a way by which the individual could request a copy of the report, failing to disclose
7 the name, address, and telephone number of the third party preparing the report, and failing to
8 properly obtain authorization or consent to such a background check, and thus was an unlawful
9 background check.

10 164. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
11 financial checks not in conformance with the applicable laws, DEFENDANTS violated labor code
12 section 432.5.

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

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

21 167. By requiring Aggrieved Employees agree in writing to unlawful provisions as a
22 condition of employment, DEFENDANTS violated labor code section 432.5.

23 *Unlawful inquiries into criminal history*

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

28 169. Upon information and belief, DEFENDANTS, in violation of California law,

1 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
2 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
3 employment and/or otherwise impermissibly inquired into criminal history on its employment
4 application in violation of California law.

5 170. By asking about arrests not resulting in convictions, DEFENDANTS violated labor
6 code section 432.7. By asking about convictions at the application phase or prior to extending an
7 employment offer, employer violated California’s Fair Chance Act, and thereby violated labor code
8 section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to disclose arrests
9 and/or convictions as a condition of employment.

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

12 172. Under the provisions of PAGA and the following Labor Code sections, including but
13 not limited to, Labor Code sections, 201-203, 210, 216, 221-223, 226, 226.7, 227.3, 245-248.6,
14 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199,
15 2699, 2699.3, 2802, 2810.5, and all relevant sections of the applicable Wage Orders, as well as all
16 interpretations of these laws by California Courts and administrative bodies, as well as any other
17 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

1 **PRAYER FOR RELIEF**

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

- 4 1. For an order that the action be certified as a class action;
5 2. For an order that PLAINTIFF be appointed as class representative;
6 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
7 4. For compensatory damages according to proof;
8 5. For liquidated damages according to proof;
9 6. For penalties according to proof;
10 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
11 withheld from PLAINTIFF and the Class Members;
12 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
13 section 17200, *et seq.*, of the California Business and Professions Code;
14 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
15 10. For pre-judgment interest as permitted by law;
16 11. For attorney's fees and costs reasonably incurred;
17 12. For civil penalties according to proof, including PAGA penalties (75% payable to the
18 LWDA and 25% payable to Aggrieved Employees); and
19 13. For such other and further relief that the Court deems just and proper.
20

21 Dated: April 4, 2023

CROSNER LEGAL, PC

22
23 By: 

24 Zachary M. Crosner, Esq.
25 Jamie Serb, Esq.
26 Brandon Brouillette, Esq.
27 Attorneys for Plaintiff
28 JEFFREY REYES

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PROOF OF SERVICE

Jeffrey Reyes vs. The Yerba Mate Co., LLC, et al.

Sacramento County Superior Court Case No. 34-2022-00331592-CU-OE-GDS

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 49440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On April 19, 2023, I served true copies of the following document(s) described as

FIRST AMENDED CLASS ACTION COMPLAINT

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ 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, mailbox, 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.

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

Executed on April 19, 2023, at Los Angeles, California.



Maria Monterrey

SERVICE LIST

Jeffrey Reyes vs. The Yerba Mate Co., LLC, et al.

Sacramento County Superior Court Case No. 34-2022-00331592-CU-OE-GDS

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