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10 on behalf of the State of California,
11 and others similarly situated and aggrieved

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 RAMON CHAVEZ, on behalf of the State
15 of California, and others similarly situated
16 and aggrieved,

17 Plaintiff,

18 v.

19 ARAKELIAN ENTERPRISES, INC., dba
20 ATHENS SERVICES, a California
21 Corporation; ATHENS DISPOSAL
22 COMPANY, INC., a California
23 Corporation; and DOES 1-100, inclusive,

24 Defendants.

Case No.: 23STCV03817

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

1 Plaintiff, RAMON CHAVEZ (“PLAINTIFF”), an individual on behalf of the State of
2 California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California
4 Corporation; ATHENS DISPOSAL COMPANY, INC., a California Corporation; and DOES 1-100,
5 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
6 believes and thereon alleges as follows:

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
24 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
25 in the State of California as a non-exempt employee. PLAINTIFF worked for DEFENDANTS as a
26 dispatcher and/or similar title(s) from in or around July 2017 through on or about February 2022.

27 5. PLAINTIFF regularly worked for DEFENDANTS out of DEFENDANTS’ locations
28 including but not limited to DEFENDANTS’ facilities located in Los Angeles County, California.

1 6. Defendant ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, is a
2 California Corporation that, at all relevant times, was authorized to do business within the State of
3 California and is doing business in the State of California.

4 7. Defendant ATHENS DISPOSAL COMPANY, INC., is a California Corporation
5 that, at all relevant times, was authorized to do business in the State of California and is doing
6 business in the State of California.

7 8. DEFENDANTS own, operate, or otherwise manages a waste collection, recycling,
8 landfill management and/or trash disposal business. DEFENDANTS own, operate, or otherwise
9 manage several plants, facilities, and/or locations in California including but not limited to facilities
10 in Los Angeles County and San Bernardino County, California. Based on information and belief,
11 DEFENDANTS operate under various names, including but not limited to, Athens Services.

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

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

28 **JOINT LIABILITY**

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

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

25 13. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
26 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
27 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
28 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same

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

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

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

1 collectively would evaluate their wage rates.

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

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

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

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

19 **PAGA ALLEGATIONS**

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

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

27 21. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
28 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory

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

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

11 22. On December 14, 2022, PLAINTIFF, through counsel, gave written notice by online
12 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
13 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
14 in this Complaint (“PAGA Notice”). Attached hereto as **Exhibit 1** is a true and correct copy of the
15 PAGA Notice also sent to DEFENDANTS via certified mail.

16 23. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
17 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
18 Employees.

19 24. 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 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
23 section 2699.3. Consequently, PLAINTIFF’s right to file the instant lawsuit against DEFENDANTS
24 has duly accrued.

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

28 **FACTUAL ALLEGATIONS**

1 26. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
2 worked for DEFENDANTS in the State of California. At all times referenced herein,
3 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
4 permitted them to work.

5 27. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
6 PLAINTIFF worked for DEFENDANTS as a dispatcher and/or similar title(s) from in or around
7 July 2017 through on or about February 2022. PLAINTIFF worked for DEFENDANTS out of
8 DEFENDANTS locations including but not limited to DEFENDANTS' facilities located in Los
9 Angeles County, California. PLAINTIFF regularly worked at least eight (8) hours per day, at least
10 five (5) days per week.

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

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

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

26 31. Based on information and belief, Aggrieved Employees were not paid for all hours
27 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
28 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-

1 the clock work policies and/or practices. For example, on information and belief, Aggrieved
2 Employees were required to complete off-the-clock work outside of scheduled shifts due to work-
3 related communications they received and were required to respond to, including but not limited to,
4 communications from supervisors regarding scheduling and/or other work tasks, resulting in the
5 underpayment of wages owed to Aggrieved Employees.

6 32. Based on information and belief, DEFENDANTS did not compensate Aggrieved
7 Employees for time spent donning and doffing personal protective equipment and/or uniforms/work
8 clothing (e.g., footwear, reflective vests, protective eyewear, gloves and/or face masks) during meal
9 periods, before the start of a scheduled shift, and/or after completing a scheduled shift, resulting in
10 off-the-clock work and the underpayment of wages owed to Aggrieved Employees.

11 33. Based on information and belief, DEFENDANTS required AGGRIEVED
12 EMPLOYEES to undergo security checks/temperature screenings and/or were required to stand in
13 employee lines to access DEFENDANTS' electronic time keeping system prior to clocking in for
14 the start of their shifts, before clocking back in from meal periods and/or after clocking out for their
15 shifts, resulting in uncompensated work time, and the underpayment of wages owed to Aggrieved
16 Employees in violation of California's minimum and overtime wage laws.

17 34. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
18 required to perform other off-the-clock work for which they were not compensated. For example,
19 based on information and belief, before starting a shift and clocking in for a shift, Aggrieved
20 Employees were required to perform work off-the-clock. For example, at times, based on
21 information and belief, DEFENDANTS required Aggrieved Employees to perform pre-trip
22 inspections and/or complete other work tasks before clocking in for a shift. This work time was
23 completed off-the-clock/outside of the scheduled shift and was uncompensated resulting in unpaid
24 wages owed to Aggrieved Employees, in violation of California's minimum wage laws.

25 35. Based on information and belief, at times, DEFENDANTS' electronic employee
26 time-keeping system malfunctioned such that Aggrieved Employees were required to either
27 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
28 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-

1 the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on
2 information and belief, Aggrieved Employees experienced the same issues when clocking out for
3 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
4 recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved
5 Employees.

6 36. Based on information and belief, DEFENDANTS at times required/requires
7 Aggrieved Employees to travel between DEFENDANTS' facility locations without compensating
8 Aggrieved Employees for the travel time.

9 37. Based on information and belief, DEFENDANTS failed to pay Aggrieved
10 Employees for time they were required to spend completing orientation, policy questionnaires,
11 training, obtaining certifications, completing required classes and/or testing, and/or time spent
12 completing the onboarding process including but not limited to reviewing various documents and
13 policies provided by DEFEDANTS. Based on information and belief, this work time was completed
14 off-the-clock and was not compensated.

15 38. Based in information and belief, DEFENDANTS implemented a time-rounding
16 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
17 compensable time because the time-rounding system implemented by DEFENDANTS would
18 almost always, if not always, result in understating actual compensable work time.

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

25 40. Based on information and belief, DEFENDANTS had actual and/or constructive
26 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
27 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
28 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation

1 of California's minimum and overtime wage laws.

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

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

11 43. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
12 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
13 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
14 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
15 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
16 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
17 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
18 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
19 completely. For example, oftentimes, PLAINTIFF was forced to take a late and/or interrupted meal
20 period and/or skip his meal period completely because it simply was too busy to take a full thirty-
21 minute off duty meal period before the end of the fifth hour of work. At times, PLAINTIFF's
22 supervisor instructed PLAINTIFF to record that PLAINTIFF had taken a full thirty-minute off-duty
23 meal period before the end of fifth hour of work when PLAINTIFF had been forced to take a late
24 and/or interrupted meal period and/or skip his meal period completely.

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

1 expectations.

2 45. Based on information and belief, DEFENDANTS implemented policies and/or
3 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
4 during unpaid meal periods. For example, based on information and belief, Aggrieved Employees
5 were required to remain tethered to their worksites and/or in immediate physical proximity to their
6 assigned vehicles and/or were required to monitor work communication devices and respond to
7 work-related communications during unpaid meal periods. As such, Aggrieved Employees were
8 not relieved of all duties during unpaid meal periods.

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

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

19 48. Moreover, based on information and belief, Aggrieved Employees who worked shifts
20 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
21 For example, when PLAINTIFF worked more than ten hours in a shift, PLAINTIFF was not
22 provided with any version of a second meal period. PLAINTIFF recalls working more than ten
23 hours in a shift an average of at least three (3) to four (4) times per month and that he did not receive
24 any form of a second meal period during those shifts when he worked more than ten hours.

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

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

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

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

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

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

26 55. Based on information and belief, DEFENDANTS did not have a have a compliant
27 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
28 practice. For example, based on information and belief, at times, Aggrieved Employees were at

1 times forced to cut their rest periods short and/or work through them completely due to the nature
2 of the work, the need to meet deadlines and/or complete other work tasks.

3 56. Moreover, on information and belief, DEFENDANTS failed to authorize and permit
4 rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods
5 were provided at all, limited Aggrieved Employees to only ten-minute rest periods, requiring them
6 to be back at their workstations within ten minutes of leaving, in violation of California rest period
7 law. DEFENDANTS’ failure to communicate that the rest period is a net ten minutes deprived
8 Aggrieved Employees of their rights to a full rest period.

9 57. Based on information and belief, any purported rest periods were interrupted, cut
10 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
11 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
12 completely and/or take non-compliant rest periods.

13 58. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
14 lasting longer than ten hours. For example, when PLAINTIFF worked more than ten hours in a shift,
15 PLAINTIFF was not provided with any version of a third rest period. PLAINTIFF recalls working
16 more than ten hours in a shift an average of at least three (3) to four (4) times per month and that he
17 did not receive any form of a third rest period during those shifts when he worked more than ten
18 hours.

19 59. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
21 DEFENDANTS' control during rest periods.

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

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

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

4 **62. Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
5 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
6 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
7 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
8 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
9 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate by the employee.

12 **63.** DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
13 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
14 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
15 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
16 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
17 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
18 other off-the-clock work policies and practices described above) which results in a violation of
19 Labor Code section 226(a).

20 **64.** Based on information and belief, wage statements issued by DEFENDANTS failed
21 to list all applicable hourly rates in effect during the pay period and the corresponding number of
22 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
23 Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or
24 failure to list a category containing the proper overtime rate. For example, based on information
25 and belief, at times, DEFENDANTS paid Aggrieved Employees multiple base rates of pay but failed
26 to incorporate the multiple base rates into the regular rate of pay used to calculate the owed overtime
27 rate, thereby failing to display an accurate overtime rate, in violation of Labor Code section 226(a),
28 including but not limited to, section 226(a)(9).

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

5 66. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did
6 not include all of the statutorily required information, including but not limited to, the correct name
7 and/or address of the legal entity that is the employer.

8 67. Based on further information and belief, DEFENDANTS issued wage statements to
9 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential
10 wages were paid in violation of Labor Code section 226.

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

14 69. **Failure to Produce Employment Records.** Based on information and belief,
15 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
16 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
17 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on May 24, 2022,
18 PLAINTIFF sent a written request for time, payroll and personnel records to DEFENDANTS. Yet,
19 DEFENDANTS failed timely produce complete records, or any records at all within the time periods
20 delineated by California labor law. Based on information and belief, DEFENDANTS failed and
21 continue to fail to timely produce complete time, pay, and personnel records when requested by
22 other Aggrieved Employees.

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

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

3 71. DEFENDANTS have failed and continue to fail to keep accurate and complete
4 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
5 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
6 employer control during unpaid meal periods, failure to record the true start and end times of meal
7 periods, shift start times and shift end times, and other off-the-clock work policies and practices
8 described herein.

9 72. **Unreimbursed Business Expenses.** Based on information and belief,
10 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
11 as a direct consequence of the performance of their job duties without providing reimbursement, in
12 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
13 Aggrieved Employees were improperly required to provide and maintain work tools that are
14 supposed to be the responsibility of the employer, including but not limited to, hand tools employees
15 were required to purchase and/or maintain in order to perform their assigned job duties.

16 73. Based on information and belief, DEFENDANTS shifted the costs of doing business
17 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
18 to, uniforms, work clothing, protective gear/safety equipment and/or the use of Class Members'
19 personal mobile phone and data usage for work related purposes including but not limited to
20 receiving and responding to work related messages and/or phone calls. For example, on information
21 and belief, Aggrieved Employees received calls/messages to their personal cell phones/mobile
22 devices from supervisors and/or other Aggrieved Employees regarding scheduling and/or other
23 work tasks but were not provided any and/or full reimbursement from Defendants for this personal
24 cell phone use.

25 74. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 use their personal vehicles for work without reimbursing them for the vehicle expenses they incurred
27 in connection therewith. For example, based on information and belief, DEFENDANTS failed/fails
28 to reimburse Aggrieved Employees for the costs associated with travelling between

1 DEFENDANTS' various facilities, including but not limited to, mileage, wear and tear, and gas
2 when they were required to use their personal vehicles to drive between DEFENDANTS' facilities
3 and/or use their personal vehicles for other business purposes.

4 75. Based on further information and belief, Aggrieved Employees were improperly
5 required to pay for business expenses that are the responsibility of DEFENDANTS, including but
6 not limited to, cost of gas, costs of repairs, fines, cleaning fees and/or other work-related fees,
7 incurred as a direct consequence of the discharge of their assigned job duties.

8 76. Based on information and belief, DEFENDANTS regularly failed to reimburse and
9 indemnify Class Members for business expenses. Pursuant to California Labor Code section 2802,
10 PLAINTIFF and Class Members were entitled to be reimbursed for all reasonable expenses
11 associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by
12 DEFENDANTS.

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

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

27 79. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
28 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their

1 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
2 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
3 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
4 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
5 used sick leave and the balance of paid sick leave.

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

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

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

21 83. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
22 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
23 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
24 from Aggrieved Employees' paychecks during the relevant period, by including but not limited to
25 unlawfully deducting wages paid in previous pay periods, costs of uniforms, and/or costs advanced
26 by DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code
27 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

28 84. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides

1 that all employers with 26 or more employees are required to provide up to 80 hours for covered
2 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
3 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
4 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
5 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
6 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

17 **87.** Upon separation of employment, Aggrieved Employees' final paychecks were not
18 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
19 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
20 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
21 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
22 accrued rates.

23 **88. Unlawful Agreements-Unlawful Criminal History Inquiries.**

24 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

25 **89.** Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 agree in writing to unlawful conditions of employment including but not limited to unlawful
27 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
28 violation of Labor Code section 432.5.

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

6 91. Based on information and belief, DEFENDANTS also required Aggrieved
7 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
8 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
9 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
10 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
11 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
12 FCRA when conducting background screenings for applicants, including but not limited to
13 Aggrieved Employees that were subject to a background check as a condition of employment during
14 the application phase.

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

25 93. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
26 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
27 section 432.5.

28 94. Based on further information and belief, DEFENDANTS also required Aggrieved

1 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
2 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
3 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
4 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

8 96. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
9 condition of employment, DEFENDANTS violated Labor Code section 432.5.

10 Unlawful Inquires into Criminal History

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

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

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

24 **FIRST CAUSE OF ACTION**
25 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
26 **2698, *ET SEQ.***

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

28 100. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

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

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

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

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

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

23 105. Section (b) of Labor Code section 226 further requires employers to “afford current
24 and former employees the right to inspect or receive a copy of records pertaining to their

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “in addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

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

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

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

21 **Meal Period Violations**

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

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

1 be provided before the end of the 10th hour of work. *Ibid.*

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

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

17 112. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
18 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
19 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
20 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
21 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
22 periods completely.

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

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

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

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

10 117. These unlawful meal period policies and practices result in violations of Labor Code
11 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
12 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
13 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
14 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

15 **Rest Period Violations**

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

1 applicable IWC Wage Order, §12(B).

2 119. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
3 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
4 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
5 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
6 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
7 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
8 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
9 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
10 “onus is on the employer to clearly communicate the authorization and permission [to take rest
11 periods] to its employees.”).

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

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

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

25 123. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
26 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
27 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
28 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including

1 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
2 the regular rate of compensation for purposes of determining the owed rest period premium.

3 124. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
4 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
5 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

6 **Minimum and Overtime Wage Violations**

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

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

20 127. As explained above, DEFENDANTS violated California's minimum and overtime
21 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
22 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
23 start and end times and meal period start and end times), payment according to scheduled hours
24 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
25 meal periods, and/or other otherwise off-the-clock work (described above), which resulted in the
26 failure to account for all hours worked and thus the denial of minimum and overtime wages.

27 128. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
28 Aggrieved Employees for all hours worked.

1 129. Based on information and belief, DEFENDANTS had actual or constructive
2 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
3 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
4 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
5 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
6 Employees.

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

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

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

22 **Statutory Wage Violations**

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

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

6 **Refusal to Make Payment**

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

15 **Standard Conditions of Labor Violations**

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

23 **Business Expense Violations**

24 136. California law requires employers to indemnify their employees for all necessary
25 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
26

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

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

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

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

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

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

23 141. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
24 Employees have suffered injury in that they were not completely reimbursed as mandated by
25 California law.

26 142. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

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

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

9 **Wage Statement Violations**

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

19 146. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
20 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
21 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
22 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
23 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
24 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
25 effect during the pay period and the corresponding number of hours worked at each hourly rate by
26 the employee, in violation of Labor Code section 226(a)(9).

27 147. Moreover, due to violations detailed above, including but not limited to,
28 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide

1 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
2 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
3 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
4 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
5 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
6 compensation earned during the pay period into the regular rate of pay for purposes of calculating
7 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
8 overtime worked by PLAINTIFF and other Aggrieved Employees.

9 148. As explained above, wage statements issued by DEFENDANTS failed to list the
10 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
11 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
12 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
13 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
14 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
15 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

16 149. Based on information and belief, wage statements issued by DEFENDANTS failed
17 to list all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
19 Code section 226(a)(9), due to DEFENDANTS’ failure to list an overtime rate category at all and/or
20 failure to list a category containing the proper overtime rate.

21 150. Separately, and independent from the above allegations, based on information and
22 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that
23 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal
24 entity that is the employer.

25 151. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
26 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
27 Employees over whether they received all wages owed to them.

28 152. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as

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

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

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

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

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

20 **Sick Leave Violations**

21 157. DEFENDANTS violated California's paid sick leave laws including, Labor Code
22 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
23 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
24 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
25 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
26 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
27 compensation into the sick leave pay rate calculation.

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

1 158. 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.

6 159. 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.

10 160. 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.

14 161. 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.

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

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

22 164. 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**

26 165. 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.

1 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other 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**

6 166. 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.

12 167. 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 Deductions**

18 168. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
19 an employee any part of wages theretofore paid by said employer to said employee." Based on
20 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees'
21 paychecks during the relevant period, by including but not limited to unlawfully deducting wages
22 paid in previous pay periods, costs of uniforms, and/or costs advanced by DEFENDANTS from
23 Aggrieved Employees' final paychecks. Such a practice is in violation of including but not limited
24 to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor
25 Code Section 2699.

26 169. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
27 each pay period during which the statute provisions were violated. See Lab. Code §225.5
28 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty

1 provided in this article, every person who unlawfully withholds wages due any employee in
2 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
3 to pay each employee”).

4 **Untimely Payment of Final Wages**

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

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

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

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

27 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

28 174. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall

1 require any employee or applicant for employment to agree, in writing, to any term or condition
2 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
3 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
4 conditions of employment including but not limited to unlawful criminal and/or financial checks as
5 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

25 178. Based on further information and belief, DEFENDANTS required Aggrieved
26 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
27 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
28 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by

1 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

7 Unlawful Inquires into Criminal History

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

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

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

22 Under the provisions of PAGA and the above mentioned Labor Code sections,
23 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
24 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
25 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
26 interpretations of these laws by California Courts and administrative bodies, as well as any other
27 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

28 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the

- 1 relevant California Labor Code provisions listed herein only if permitted by the
2 PAGA statute, pursuant to Labor Code section 2699(a); and
- 3 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
4 violations without a civil penalty recoverable under the PAGA, all in the default
5 amounts provided by Labor Code section 2699(f).
- 6 c. The proper measure of penalties under PAGA is the number of violations,
7 whether those violations were committed as against PLAINTIFF or any
8 Aggrieved Employee, whether a party to this action or not.

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

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PRAYER FOR RELIEF

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

1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
3. For reasonable attorney's fees and costs of suit; and
4. For such other and further relief that the Court deems just and proper.

Dated: February 21, 2023

CROSNER LEGAL, PC

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

EXHIBIT 1



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December 14, 2022

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Michael Pompay
Agent for Service of Process for:
Arakelian Enterprises, Inc.
14048 Valley Blvd
City of Industry, California 91746

Arakelian Enterprises, Inc.
Attn: Human Resources/ Legal Department
14048 Valley Blvd
City of Industry, California 91746

Michael Pompay
Agent for Service of Process for:
Athens Disposal Company, Inc.
14048 Valley Blvd
City of Industry, California 91746

Athens Disposal Company, Inc.
Attn: Human Resources / Legal
Department
14048 Valley Blvd
City of Industry, California 91746

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Arakelian Enterprises, Inc.; and Athens Disposal Company, Inc.
Date: December 14, 2022
Subject: *Ramon Chavez v. Arakelian Enterprises, Inc., et. al.*

Introduction

This office represents COMPLAINANT, Ramon Chavez (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual

managing agents of said entities: Arakelian Enterprises, Inc.; and Athens Disposal Company, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

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

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

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

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

Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee’s individual claim is time-barred.

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

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

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

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

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

for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

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

General Information

EMPLOYER owns, operates and/or otherwise manages a waste collection, recycling, landfill management and/or trash disposal business. EMPLOYER owns, operates and/or otherwise manages several plants, facilities, and/or locations in California including but not limited to facilities in Los Angeles County and San Bernardino County, California. At times, EMPLOYER operates under various names, including but not limited to, Athens Services. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a dispatcher and/or similar title(s) from in or around July 2017 through on or about February 18, 2022, when COMPLAINANT was terminated. COMPLAINANT worked for EMPLOYER out of EMPLOYER's locations including but not limited to EMPLOYER's facilities located in Los Angeles County, California. COMPLAINANT regularly worked at least eight (8) hours per day, at least (5) days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; and (14) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours

worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

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

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

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

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

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

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

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

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

Time and Pay Records

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

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

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

Personnel Records

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

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

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on May 24, 2022, COMPLAINANT sent a written request for time, payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. To this day, EMPLOYER has not produced COMPLAINANT's requested documents. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

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

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, oftentimes, COMPLAINANT was forced to take a late and/or interrupted meal period and/or skip his meal period completely because it simply was too busy to take a full thirty-minute off duty meal period

before the end of the fifth hour of work. At times, COMPLAINANT's supervisor instructed COMPLAINANT to record that COMPLAINANT had taken a full thirty-minute off-duty meal period before the end of fifth hour of work when COMPLAINANT had been forced to take a late and/or interrupted meal period and/or skip his meal period completely.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain tethered to their worksites and/or in immediate physical proximity to their assigned vehicles and/or were required to monitor work communication devices and respond to work-related communications during unpaid meal periods. As such, NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties during unpaid meal periods.

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

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

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT worked more than ten hours in a shift, COMPLAINANT was not provided with any version of a second meal period. COMPLAINANT recalls working more than ten hours in a shift an average of at least three (3) to four (4) times per month and that he did not receive any form of a second meal period during those shifts when he worked more than ten hours.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual

and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods,

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil

and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to its employees.").

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of

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").

compliant rest period policy in practice. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were at times forced to cut their rest periods short and/or work through them completely due to the nature of the work, the need to meet deadlines and/or complete other work tasks.

Moreover, on information and belief, EMPLOYER failed to authorize and permit rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law. EMPLOYER’s failure to communicate that the rest period is a net ten minutes deprived NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to a full rest period, as such as policy only relieves NON-EXEMPT AGGRIEVED EMPLOYEES from their workstation for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten minutes.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES’ rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked more than ten hours in a shift, COMPLAINANT was not provided with any version of a third rest period. COMPLAINANT recalls working more than ten hours in a shift an average of at least three (3) to four (4) times per month and that he did not receive any form of a third rest period during those shifts when he worked more than ten hours.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control during rest periods.

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

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

but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

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

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

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid

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

meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to work-related communications they received and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment and/or uniforms/work clothing (e.g., footwear, reflective vests, protective eyewear, gloves and/or face masks) during meal periods, before the start of a scheduled shift, and/or after completing a scheduled shift, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo security checks/temperature screenings and/or were required to stand in employee lines to access EMPLOYER's electronic time keeping system prior to clocking in for the start of their shifts, before clocking back in from meal periods and/or after clocking out for their shifts, resulting in uncompensated work time, and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated. For example, based on information and belief, before starting a shift and clocking in for a shift, NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform work off-the-clock. For example, at times, based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to perform pre-trip inspections and/or complete other work tasks before clocking in for a shift. This work time was completed off-the-clock/outside of the scheduled shift and was uncompensated resulting in unpaid wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

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

Based on information and belief, EMPLOYER at times required/requires NON-EXEMPT AGGRIEVED EMPLOYEES to travel between EMPLOYER's facility locations without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for the travel time.

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

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

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

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

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

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

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

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed

⁴ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

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

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

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

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would

⁵ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

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

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

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

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

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

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

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

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

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁶

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

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

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of

⁶ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, based on information and belief, at times, EMPLOYER paid NON-EXEMPT AGGRIEVED EMPLOYEES multiple base rates of pay but failed to incorporate the multiple base rates into the regular rate of pay used to calculate the owed overtime rate, thereby failing to display an accurate overtime rate, in violation of Labor Code section 226(a), including but not limited to, section 226(a)(9).

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

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

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE

and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

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

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

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

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period, by including but not limited to unlawfully deducting wages paid in previous pay periods, costs of uniforms, and/or costs advanced by EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES' final paychecks. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee").

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

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

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

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

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁸

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

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

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

⁸ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” See Cal. Lab. Code § 2804.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer, including but not limited to, hand tools NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to purchase and/or maintain in order to perform their assigned job duties.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms, work clothing, protective gear/safety equipment and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing. For example, on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES received calls/messages to their personal cell phones/mobile devices from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks but were not provided any and/or full reimbursement from EMPLOYER for this personal cell phone use.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to use their personal vehicles for work without reimbursing them for the vehicle expenses they incurred in connection therewith. For example, based on information and belief, EMPLOYER failed/fails to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for the costs associated with travelling between EMPLOYER’s various facilities, including but not limited to, mileage, wear and tear, and gas when they were required to use their personal vehicles to drive between EMPLOYER’s facilities and/or use their personal vehicles for other business purposes.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are the responsibility of EMPLOYER, including but not limited to, cost of gas, costs of repairs, fines, cleaning fees and/or other work-related fees, incurred as a direct consequence of the discharge of their assigned job duties.

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit

checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

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

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

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

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

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

Unlawful Inquires into Criminal History

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

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

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

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

Conclusion

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

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

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

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

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other

charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC