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9 Attorneys for Plaintiff CHRISTOPHER MADISON
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 CHRISTOPHER MADISON, on behalf of
15 the State of California, and others similarly
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 AIR CANADA, a business entity, form
20 unknown; AIR CANADA
21 CORPORATION, a business entity, form
22 unknown; and DOES 1-100, inclusive,

23 Defendants.

Case No.: **23STCV03616**

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

1 Plaintiff, CHRISTOPHER MADISON (“PLAINTIFF”), an individual on behalf of the State
2 of California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants AIR CANADA, a business entity, form unknown; AIR CANADA
4 CORPORATION, a business entity, form unknown; and DOES 1-100, inclusive, (collectively
5 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
6 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 from in or around February 2019 through the
26 present.

27 5. PLAINTIFF regularly worked for DEFENDANTS as a ticketing counter agent,
28 customer experience specialist and/or similar title(s) at DEFENDANTS’ terminal, location and/or

1 facility located at Los Angeles International Airport, in Los Angeles, California.

2 6. DEFENDANTS are each a business entity, form unknown to PLAINTIFF at the time
3 of filing, that, at all relevant times, were authorized to do business within the State of California and
4 are doing business in the State of California.

5 7. DEFENDANTS own, operate, or otherwise manage a Canadian airline service, with
6 terminals, facilities, and/or locations operating out of airports located throughout California,
7 including but not limited to, the terminal, facility, and/or location at Los Angeles International
8 Airport (LAX) in Los Angeles, California, at which PLAINTIFF regularly worked for
9 DEFENDANTS during the relevant period.

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

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

26 **JOINT LIABILITY**

27 10. Under California law, the definition of the terms “to employ” are broadly construed
28

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

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

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

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

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

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

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

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

17. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF 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 PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF.

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

PAGA ALLEGATIONS

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

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

20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein.

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

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

10 21. On December 7, 2022, PLAINTIFF, through counsel, gave written notice by online
11 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
12 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
13 in this Complaint (“PAGA Notice”). Attached hereto as **Exhibit 1** is a true and correct copy of the
14 PAGA Notice also sent to DEFENDANTS via certified mail.

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

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

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

27 **FACTUAL ALLEGATIONS**

28 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees

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

4 26. PLAINTIFF is employed by DEFENDANTS as a non-exempt employee.
5 PLAINTIFF worked for DEFENDANTS as a ticketing counter agent, customer experience
6 specialist and/or similar title(s) at DEFENDANTS' terminal, location, and/or facility located at Los
7 Angeles International Airport, in Los Angeles, California, from in or around February 2019, through
8 in or around December 2022, when PLAINTIFF went on leave. PLAINTIFF regularly worked at
9 least eight (8) hours per day, at least five (5) days per week.

10 27. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
11 hourly basis for time counted by DEFENDANTS as hours worked. At times, DEFENDANTS also
12 compensated PLAINTIFF with non-discretionary bonuses/incentive pay and/or other non-
13 discretionary compensation.

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

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

27 30. Based on information and belief, Aggrieved Employees were not paid for all hours
28 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours

1 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
2 the clock work policies and/or practices. For example, based on information and belief, at times,
3 Aggrieved Employees were required to assist passengers and/or complete other work tasks before
4 clocking in for the start of their shifts and/or after clocking out at the end of their shifts, which said
5 time was neither recorded nor compensated, resulting in the underpayment of wages owed to
6 Aggrieved Employees, in violation of California's minimum wage and overtime wage laws.

7 31. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
8 Employees for time spent performing pre-shift and/or post-shift off-the-clock work such as, but not
9 limited to, time spent undergoing required pre-clock-in employer-mandated security screenings
10 and/or temperature screenings, time spent bestowing personal items in employee lockers/storage
11 area, time spent in employee lines to access DEFENDANTS' employee electronic timekeeping
12 system and/or time spent reinitiating/reactivating/rebooting DEFENDANTS' electronic/
13 timekeeping system.

14 32. Based on information and belief, at times, DEFENDANTS' employee time-keeping
15 system consistently malfunctioned such that PLAINTIFF and other Aggrieved Employees were
16 required to either reinitiate the system prior to being able to clock in and/or were unable to clock in
17 at all for the start of their shifts and/or clock back in from meal periods, resulting in consistent off-
18 the-clock work and the underpayment of minimum and overtime wages owed to PLAINTIFF and
19 other Aggrieved Employees. This time spent under DEFENDANTS' control was not recorded and
20 not compensated and resulted in unpaid minimum and overtime wages.

21 33. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
22 also required to complete off-the-clock work outside of scheduled shifts due to work-related phone
23 calls and/or messages they received to their personal phone and were required to respond to,
24 including but not limited to, communications from supervisors, resulting in significant off-the-clock
25 work and the underpayment of minimum wages owed to PLAINTIFF and other Aggrieved
26 Employees.

27 34. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
28 also pressured to complete at least some of their work tasks off-the-clock in order to meet

1 DEFENDANTS' goals and expectations. For example, based on information and belief, Aggrieved
2 Employees performed off-the-clock work in the form of completing DEFENDANTS' policy
3 documents/required lessons, attending remote work-related meetings and/or completing other work
4 tasks to meet DEFENDANTS' demands, resulting in off-the-clock work per month that was neither
5 recorded nor compensated, resulting in the underpayment of minimum wages owed to Aggrieved
6 Employees.

7 35. Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT
8 AGGRIEVED EMPLOYEES split shift compensation whenever their work schedules were
9 interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a
10 violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an
11 employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to
12 the minimum wage for that workday...).

13 36. Based on information and belief, DEFENDANTS failed to pay Aggrieved
14 Employees for time they were required to spend completing orientation, policy questionnaires,
15 and/or time spent completing the onboarding process including but not limited to reviewing various
16 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
17 was completed off-the-clock and was not compensated.

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

22 38. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
23 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
24 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
25 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
26 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
27 forty (40) hours in a week. For example, on information and belief, DEFENDANTS issued wage
28 statements to PLAINTIFF evidence DEFENDANTS paid PLAINTIFF straight time – i.e. at his

1 regular rate of pay for time worked beyond eight hours in a day and/or beyond forty hours in week.
2 Notably, DEFENDANTS' issued wage statements to PLAINTIFF list an overtime rate category
3 containing an overtime rate that is the same as the regular rate of pay.

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

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

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

18 42. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
19 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
20 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
21 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
22 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
23 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
24 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
25 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
26 completely. For example, PLAINTIFF recalls at least five to ten shifts from in or about late June
27 2022 through in or about late September 2022 during which PLAINTIFF was forced to work through
28 his first meal period completely due to understaffing, lack of relief workers and/or the nature of his

1 job duties. Based on information and belief, other Aggrieved Employees were also consistently
2 forced to take late, shortened and/or interrupted meal periods and/or work through their meal periods
3 completely due to understaffing, lack of coverage, lack of relief workers, the need to attend to
4 passengers/work situations requiring immediate attention and/or complete other work tasks.

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

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

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

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

23 47. Moreover, based on information and belief, Aggrieved Employees who worked shifts
24 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
25 For example, when PLAINTIFF worked shifts lasting longer than ten hours, he was not allowed any
26 version of a second meal period. PLAINTIFF recalls working shifts lasting longer than ten and/or
27 twelve hours on at least ten occasions without being afforded any version of a second meal period.

28 48. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and

1 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
2 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
3 did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

26 53. PLAINTIFF and other Aggrieved Employees were not adequately informed,
27 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
28 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to

1 the taking or timing of duty-free rest periods.

2 54. Based on information and belief, DEFENDANTS did not have a have a compliant
3 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
4 practice. For example, based on information and belief, DEFENDANTS had/has an unlawful rest
5 period policy whereby any purported rest periods are combined into a single rest period, which
6 based on further information and belief, is typically on duty and/or otherwise noncompliant with
7 California rest period law. For instance, PLAINTIFF recalls that on many shifts his two owed rest
8 periods were combined into a single rest period which he was required to take immediately
9 following his purported meal period. At other times, PLAINTIFF's rest periods were combined into
10 a single purported rest period that was taken well after six hours of working.

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

15 56. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
16 lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer than ten
17 hours, PLAINTIFF was not provided with a third rest period. As explained above, DEFENDANTS
18 purported to allow only two rest periods per shift regardless of the number of hours worked and
19 further required Aggrieved Employees to take the purported rest periods combined as one and often
20 combined an unpaid meal period.

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

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

27 59. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
28 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in

1 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
2 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
3 for failure to incorporate all non-discretionary remuneration, including but not limited to,
4 bonuses/incentive pay, multiple base rates of pay, shift differential pay, and/or other non-
5 discretionary compensation into the regular rate of compensation for purposes of calculating the
6 owed rest period premium.

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

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

23 **62.** Based on information and belief, wage statements issued by DEFENDANTS failed
24 to list all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
26 Code section 226(a)(9). For example, based on information and belief, DEFENDANTS' wage
27 statements issued to PLAINTIFF and other Aggrieved Employees do not provide an accurate
28 overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage

1 statements provide an inaccurate overtime rate that is the same rate as the regular rate of pay.
2 Accordingly, PLAINTIFF and other Aggrieved Employees are forced to perform extensive
3 calculation using outside resources to determine what their pay rate was for each corresponding hour
4 worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein,
5 DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned
6 during the pay period, including but not limited to, non-discretionary bonus/incentive pay and/or
7 shift differential pay and/or other non-discretionary compensation and/or multiple base rates of pay
8 into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for
9 each hour of overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

23 67. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
24 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
25 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
26 from Aggrieved Employees paychecks during the relevant period, including but not limited to,
27 deducting costs advanced by DEFENDANTS from Aggrieved Employees final paychecks and/or
28 deductions for purported overpayments from prior pay periods and/or deductions for

1 uniforms/protective equipment and/or negligently broken/damaged company property. Such a
2 practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects
3 DEFENDANTS to civil penalties under Labor Code Section 2699.

4 **68. Failure to Produce Employment Records.** Based on information and belief,
5 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
6 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
7 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on November 4, 2022,
8 PLAINTIFF, through counsel, sent a written request for payroll and personnel records to
9 DEFENDANTS. Yet, DEFENDANTS failed to timely produce complete records (e.g., time
10 records) within the time periods delineated by California labor law. Based on information and belief,
11 DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel
12 records when requested by other Aggrieved Employees.

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

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

27 **71. Unreimbursed Business Expenses.** Based on information and belief,
28 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses

1 as a direct consequence of the performance of their job duties without providing reimbursement, in
2 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
3 Aggrieved Employees were improperly required to provide and maintain work tools that are
4 supposed to be the responsibility of the employer.

5 72. Based on information and belief, DEFENDANTS shifted the costs of doing business
6 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
7 to, uniforms/work clothing/safety/protective gear, personal mobile phone, personal
8 computer/devices and data usage for work related purposes including but not limited to receiving
9 and responding to work related messages and/or phone calls. For example, DEFENDANTS
10 required PLAINTIFF and other Aggrieved Employees to use their personal cellphones/mobile
11 devices to log, notate and/or otherwise document various work-related activities and then send the
12 information to their supervisors using their personal devices without reimbursing PLAINTIFF and
13 other Aggrieved Employees for this personal cell phone use. For instance, PLAINTIFF was
14 required to use his personal cell phone to notate and/or record flight arrival times, times the plane
15 doors opened, times the plane doors closed, among other work-related activities and/or work
16 details/information and then send the information via text message to his ramp manager and/or
17 another supervisor. Based on information and belief, other Aggrieved Employees were also
18 consistently required to use their personal cell phones/mobile devices for storing, sending and/or
19 receiving work-related communications/information without receiving reimbursement from
20 DEFENDANTS. Moreover, at times, including but not limited to, from in or about late June 2020
21 through in or about late September 2020, PLAINTIFF was regularly required to purchase his own
22 employer-mandated Covid-protection face masks without receiving any reimbursement from
23 DEFENDANTS.

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

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

5 75. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
6 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
7 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
8 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
9 accrued sick leave hours on the correct number of hours worked (as a result of the
10 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
11 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
12 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
13 not limited to, bonuses/incentive pay, multiple base rates of pay, shift differential pay, and/or other
14 non-discretionary compensation into the sick leave pay rate calculation.

15 76. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
16 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
17 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
18 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
19 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
20 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
21 used sick leave and the balance of paid sick leave.

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

28 78. Upon information and belief, DEFENDANTS failed and continue to fail to comply

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

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

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

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

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

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

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

28 83. Suitable seating is one of the worker protections covered by California's Wage

1 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
2 construed to effectuate the goal of protecting the comfort and welfare of employees. Brinker
3 Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

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

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

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

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

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

28 89. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders

1 provides as follows:

2 (A) Each workday an employee is required to report for work and does report, but is
3 not put to work or is furnished less than half said employee's usual or scheduled
4 day's work, the employee shall be paid for half the usual or scheduled day's work,
5 but in no event for less than two (2) hours nor more than four (4) hours, at the
6 employee's regular rate of pay, which shall not be less than the minimum wage.

7 (B) If an employee is required to report for work a second time in any one workday
8 and is furnished less than two (2) hours of work on the second reporting.

9 90. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees
10 were not paid reporting time wages in accordance with California law, including but not limited to
11 the applicable IWC Wage Order. For example, based on information and belief, at times, Aggrieved
12 Employees reported to work for a scheduled shift but were sent home and/or were not put to work
13 and were not paid all owed reporting time pay wages in accordance with California law.

14 91. Based on information and belief, DEFENDANTS have a policy and practice of
15 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
16 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
17 pay all reporting time wages to PLAINTIFF and other Aggrieved Employees violated and continues
18 to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including
19 but not limited to section 1198.

20 92. **Violation of California Day of Rest Law.** Under California law, every employee in
21 California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its
22 employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor
23 Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

24 93. Based on information and belief, DEFENDANTS have and continue to have a
25 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
26 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
27 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
28 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in

violation of California law, including but not limited to Labor Code Section 551.

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

Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

97. Based on information and belief, DEFENDANTS also required Aggrieved Employees to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the 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.*). Based on information and belief, DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and FCRA when conducting background screenings for applicants, including but not limited to Aggrieved Employees that were subject to a background check as a condition of employment during the application phase.

98. Based on information and belief, DEFENDANTS required Aggrieved Employees to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose

1 the name, address, and telephone number of the third party preparing the report, and failing to
2 properly obtain authorization or consent to such a background check, and thus was an unlawful
3 background check.

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

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

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

15 102. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
16 condition of employment, DEFENDANTS violated Labor Code section 432.5.

17 Unlawful Inquires into Criminal History

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

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

27 105. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
28 engaged in these same herein described unlawful practices, which led to violations of the California

1 Labor Code as explained above and further violations alleged below, and that DEFENDANTS
2 applied these same herein described unlawful practices to all of its employees that it applied to
3 PLAINTIFF.

4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
6 **2698, *ET SEQ.***

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

8 106. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 **Failure to Keep Accurate Records**

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

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

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

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

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

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

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

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

25 113. Based on information and belief, DEFENDANTS fail to timely produce or make
26 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
27 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
28 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

1 **Meal Period Violations**

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

7 115. Employers must also provide employees with a second duty-free, uninterrupted thirty
8 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
9 be provided before the end of the 10th hour of work. *Ibid.*

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

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

25 118. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
26 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
27 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
28 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 periods or skip meal periods completely.

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

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

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

122. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal periods in violation of California law 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.

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

Rest Period Violations

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

1 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
2 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
3 1029). The rest period requirement obligates employers to permit and authorize employees to take
4 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
5 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
6 257. If the employer fails to provide any required rest period, the employer must pay the employee
7 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
8 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
9 applicable IWC Wage Order, §12(B).

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

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

27 127. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and

1 employer control during rest periods. Based on further information and belief, Aggrieved
2 Employees were pressured to complete their work duties according to a designated schedule such
3 that rest periods were only taken once tasks were completed, and/or as time permitted.

4 128. As explained above, PLAINTIFF and Aggrieved Employees did not receive legally
5 compliant first, second, or third rest periods as required by California law.

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

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

15 **Minimum and Overtime Wage Violations**

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

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

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

8 134. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
9 Aggrieved Employees for all hours worked.

10 135. Based on information and belief, DEFENDANTS failed to pay Aggrieved
11 Employees split shift compensation whenever their work schedules were interrupted by non-paid
12 non-working periods established by DEFENDANTS, which resulted in a violation of the applicable
13 Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift,
14 one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that
15 workday...).

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

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

26 138. Based on information and belief, DEFENDANTS further violated California's
27 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
28 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary

1 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
2 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
3 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
4 other Aggrieved Employees.

5 139. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
6 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
7 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
8 Wage Orders, section 20.

9 **Statutory Wage Violations**

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

21 **Refusal to Make Payment**

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

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

2 **Standard Conditions of Labor Violations**

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

11 **Business Expense Violations**

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

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

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).

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

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

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

11 148. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
12 Employees have suffered injury in that they were not completely reimbursed as mandated by
13 California law.

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

18 150. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
19 Employees have suffered injury in that they were not completely reimbursed as mandated by
20 California law.

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

25 **Wage Statement Violations**

26 152. California law requires every employer semi-monthly or at the time of each payment
27 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
28 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
2 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
3 is paid; (7) the name of the employee and only the last four digits of his or her social security number
4 or an employee identification number other than a social security number; (8) the name and address
5 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

25 155. As explained above, wage statements issued by DEFENDANTS failed to list the
26 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
27 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices

1 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
2 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
3 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

13 158. DEFENDANTS' failure to accurately list all hours worked on all wage statements
14 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
15 Employees over whether they received all wages owed to them.

16 159. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
17 they could not easily determine whether they received all wages owed to them and whether they
18 were paid for all hours worked.

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

22 161. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
23 Aggrieved Employees with accurate, itemized wage statements.

24 162. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
25 Employees have suffered injury. The absence of accurate information on their wage statements has
26 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
27 mathematical computations to determine the amount of wages owed, and will cause difficulty and
28 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the

1 submission of inaccurate information about wages and amounts deducted from wages to state and
2 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
3 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
4 and pay records than if DEFENDANT had complied with its legal obligations.

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

8 **Seating Violations**

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

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

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

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

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

23 167. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
24 other Aggrieved Employees with suitable seating, and when such employees were not engaged in
25 duties which required them to stand, no seating was placed in reasonable proximity to their
26 workstations.

27 168. Moreover, based on information and belief, the nature of the work reasonably

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

1 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
2 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
3 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
4 of seats would not interfere with the performance of their duties.

5 169. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
6 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
7 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
8 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
9 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
10 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
11 Aggrieved Employee, results in a separate civil penalty.

12 **Sick Leave Violations**

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

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

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

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

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

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

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

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

16 **Failure To Provide Supplemental Paid Sick Leave**

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

24 **Unlawful Deductions**

25 179. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
26 an employee any part of wages theretofore paid by said employer to said employee.” Based on
27 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
28 paychecks during the relevant period, including but not limited to, deducting costs advanced by

1 DEFENDANTS from Aggrieved Employees final paychecks and/or deductions for purported
2 overpayments from prior pay periods and/or deductions for uniforms/protective equipment and/or
3 negligently broken/damaged company property. Such a practice is in violation of including but not
4 limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under
5 Labor Code Section 2699.

6 180. Each violation results in a separate civil penalty, for each Aggrieved Employees, for
7 each pay period during which the statute provisions were violated. See Lab. Code §225.5
8 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
9 provided in this article, every person who unlawfully withholds wages due any employee in
10 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
11 to pay each employee”).

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

13 181. California Labor Code section 227.3 provides that when an employer policy provides
14 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
15 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
16 employee’s final rate in accordance with such contract of employment or employer policy respecting
17 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
18 off upon termination.

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

24 **Untimely Payment of Final Wages**

25 183. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
26 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
27 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
28 employee not having a written contract for a definite period quits his or her employment, his or her

1 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
2 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting.”

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

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

16 186. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
17 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
18 256.

19 **Reporting Time Pay Violations**

20 187. Section 5 of all applicable IWC Wage Orders provides as follows:

21 (A) Each workday an employee is required to report for work and does report, but is
22 not put to work or is furnished less than half said employee's usual or scheduled
23 day's work, the employee shall be paid for half the usual or scheduled day's work,
24 but in no event for less than two (2) hours nor more than four (4) hours, at the
25 employee's regular rate of pay, which shall not be less than the minimum wage.

26 (B) If an employee is required to report for work a second time in any one workday
27 and is furnished less than two (2) hours of work on the second reporting.

28 188. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees

1 were not paid reporting time wages in accordance with California law, including but not limited to
2 the applicable IWC Wage Order. For example, based on information and belief, at times, Aggrieved
3 Employees reported to work for a scheduled shift but were sent home and/or were not put to work
4 and were not paid all owed reporting time pay wages in accordance with California law.

5 189. Based on information and belief, DEFENDANTS have a policy and practice of
6 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
7 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
8 pay all reporting time wages to PLAINTIFF and other Aggrieved Employees violated and continues
9 to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including
10 but not limited to section 1198.

11 **Violation of California Day of Rest Law**

12 190. Under California law, every employee in California is "entitled" to "one day's rest
13 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in
14 seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of
15 the foregoing sections is a misdemeanor.

16 191. Based on information and belief, DEFENDANTS have and continue to have a
17 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
18 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
19 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
20 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
21 violation of California law, including but not limited to Labor Code Section 551.

22 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

23 192. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall
24 require any employee or applicant for employment to agree, in writing, to any term or condition
25 which is known by such employer...to be prohibited by law." DEFENDANTS required and
26 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
27 conditions of employment including but not limited to unlawful criminal and/or financial checks as
28 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

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

25 197. Based on further information and belief, DEFENDANTS knew that requiring
26 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
27 condition of obtaining and/or holding employment was unlawful.

28 198. By requiring that Aggrieved Employees sign off on the illegal background and/or

1 financial checks, DEFENDANTS violated Labor Code section 432.5.

2 Unlawful Inquires into Criminal History

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

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

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

17 202. Under the provisions of PAGA and the above mentioned Labor Code sections,
18 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
19 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
20 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
21 interpretations of these laws by California Courts and administrative bodies, as well as any other
22 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 23 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
24 relevant California Labor Code provisions listed herein only if permitted by the
25 PAGA statute, pursuant to Labor Code section 2699(a); and
26 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
27 violations without a civil penalty recoverable under the PAGA, all in the default
28 amounts provided by Labor Code section 2699(f).

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

4 203. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
5 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 17, 2023

CROSNER LEGAL, PC

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

EXHIBIT 1



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (310) 496-5818
fax: (310) 510-6429

December 7, 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:

Air Canada

Attn: Human Resources/ Legal Department
1410 N. Westshore Blvd. Suite 700
Tampa, FL 33607

Air Canada

Attn: Human Resources / Legal Department
600 World Way
Los Angeles, CA 90045

Air Canada Corporation

Attn: Human Resources/ Legal
Department
1410 N. Westshore Blvd. Suite
700
Tampa, FL 33607

Air Canada Corporation

Attn: Human Resources / Legal
Department
600 World Way
Los Angeles, CA 90045

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Air Canada; and Air
Canada Corporation
Date: December 7, 2022
Subject: *Christopher Madison v. Air Canada, et al.*

Introduction

This office represents COMPLAINANT, Christopher Madison (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: Air Canada and Air Canada Corporation (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 or otherwise manages a Canadian airline, with terminals, facilities, and/or locations operating out of airports throughout California, including but not limited to, the terminal, facility, and/or location at Los Angeles International Airport (LAX) in Los Angeles, California, at which COMPLAINANT regularly worked for EMPLOYER during the relevant period. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT is currently employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a ticketing counter agent, customer experience specialist and/or similar title(s) from in or around February 2019 through in or around December 2022, when COMPLAINANT went on leave. COMPLAINANT worked for EMPLOYER out of EMPLOYER's location located in Los Angeles, 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. At times, EMPLOYER also compensated COMPLAINANT with non-discretionary bonuses/incentive pay and/or other non-discretionary compensation.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment;; (14) failed and continues to fail to provide suitable seating; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

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

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

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

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

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

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

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

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

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work

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

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 November 4, 2022, COMPLAINANT, through counsel, sent a written request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records (e.g., time records) within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

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

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant*

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

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. . For example, COMPLAINANT recalls at least five to ten shifts from in or about late June 2022 through in or about late September 2022 during which COMPLAINANT was forced to work through his first meal period completely due to understaffing, lack of relief workers and/or the nature of his job duties. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also consistently forced to take late, shortened and/or interrupted meal periods and/or work through their meal periods

completely due to understaffing, lack of coverage, lack of relief workers, the need to attend to passengers/work situations requiring immediate attention and/or complete other work tasks.

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.

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 shifts lasting longer than ten hours, he was not allowed any version of a second meal period. COMPLAINANT recalls working shifts lasting longer than ten and/or twelve hours on at least ten occasions without being afforded any version of a second meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all

time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

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

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

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

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, based on information and belief, EMPLOYER had/has an unlawful rest period policy whereby any purported rest periods are combined into a single rest period, which based on further information and belief, is typically on duty and/or otherwise noncompliant with California rest period law. For instance, COMPLAINANT recalls that on many shifts his two owed rest periods were combined into a single rest period which he was required to take immediately following his purported meal period. At other times, COMPLAINANT's rest periods were combined into a single purported rest period that was taken well after six hours of working.

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

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked shifts

lasting longer than ten hours, COMPLAINANT was not provided with a third rest period. As explained above, EMPLOYER purported to allow only two rest periods per shift regardless of the number of hours worked and further required NON-EXEMPT AGGRIEVED EMPLOYEES to take the purported rest periods combined as one and often combined with an unpaid meal period.

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/incentive pay, multiple base rates of pay, 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.

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”).

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 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, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to assist passengers and/or complete other work tasks before clocking in for the start of their shifts and/or after clocking out at the end of their shifts, which said time was neither recorded nor compensated, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage and overtime wage laws.

Based on information and belief, EMPLOYER failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent performing pre-shift and/or post-shift off-the-clock

work such as, but not limited to, time spent undergoing required pre-clock-in employer-mandated security screenings and/or temperature screenings, time spent bestowing personal items in employee lockers/storage area, time spent in employee lines to access EMPLOYER's employee electronic timekeeping system and/or time spent reinitiating/reactivating/rebooting EMPLOYER's electronic/ timekeeping system.

Based on information and belief, at times, EMPLOYER's employee time-keeping system consistently malfunctioned such that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate 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 consistent off-the-clock work and the underpayment of minimum and overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum and overtime wages.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their personal phone and were required to respond to, including but not limited to, communications from supervisors, resulting in significant off-the-clock work and the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some of their work tasks off-the-clock in order to meet EMPLOYER's goals and expectations. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES performed off-the-clock work in the form of completing EMPLOYER's policy documents/required lessons, attending remote work-related meetings and/or completing other work tasks to meet EMPLOYER's demands, resulting in off-the-clock work per month that was neither recorded nor compensated, resulting in the underpayment of minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever their work schedules were interrupted by non-paid non-working periods established by EMPLOYER, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday...).

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

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. 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

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").

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. For example, on information and belief, EMPLOYER's issued wage statements to COMPLAINANT evidence EMPLOYER paid COMPLAINANT straight time – i.e. at this regular rate of pay for time worked beyond eight hours in a day and/or beyond forty hours in week. Notably, DEFENDANS' issued wage statements to COMPLAINANT list an overtime rate category containing an overtime rate that is the same as the regular rate of pay.

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 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

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”).

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/incentive pay, multiple base rates of pay, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

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

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

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

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

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

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT

AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

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

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

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

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

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

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

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

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

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

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

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). 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.

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).

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

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

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, based on information and belief, EMPLOYER's wage statements issued to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES do not provide an accurate overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage statements provide an inaccurate overtime rate that is the same rate as the regular rate of pay. Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are forced to perform extensive calculation using outside resources to determine what their pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As described herein, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period, including but not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or other non-discretionary compensation and/or multiple base rates of pay into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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

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

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

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

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

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

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

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

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

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁸

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/or EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period, including but not limited to, deducting costs advanced by EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' final paychecks and/or deductions for purported overpayments from prior pay periods and/or deductions for uniforms/protective equipment and/or negligently broken/damaged company property. 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").

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

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

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

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for

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

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.⁹

Reporting Time Pay Violations:

Section 5 of all applicable IWC Wage Orders provides as follows:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

Based on information and belief, COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, EMPLOYER has a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. EMPLOYER's failure to pay all reporting time wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violated and continues to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

⁹ (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee").

Violation of California Day of Rest Law

Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, EMPLOYER has and continues to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

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

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

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms/work clothing/safety/protective gear, personal mobile phone, personal computer/devices and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. For example, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES to use their personal cellphones/mobile devices to log, notate and/or otherwise document various work-related activities and then send the information to their supervisors using their personal devices without reimbursing COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for this personal cell phone use. For instance, COMPLAINANT was required to use his personal cell phone to notate and/or record flight arrival times, times the plane doors opened, times the plane doors closed, among other work-related activities and/or work details/information and then send the information via text message to his ramp manager and/or another supervisor. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were also consistently required to use their personal cell phones/mobile devices for storing, sending and/or receiving work-related communications/information without receiving reimbursement from EMPLOYER. Moreover, at times, including but not limited to, from in or about late June 2020 through in or about late September 2020, COMPLAINANT was regularly required to purchase his own employer--mandated Covid-protection face masks without receiving any reimbursement from EMPLOYER. 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.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

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

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED

EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

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

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

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

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

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, 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