

1 MICHAEL R. CROSNER, ESQ. (SBN 41299)
mike@crosnerlegal.com
2 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
3 JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
6 Beverly Hills, CA 90210
7 Tel: (310) 496-5818
8 Fax: (310) 510-6429

Attorneys for Plaintiff JOHNNY GARCIA
As an individual and on behalf of all others similarly situated

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

12 JOHNNY GARCIA, as an individual on
behalf of himself and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 v.

16 WIN-DOR, INC., a California corporation;
17 and DOES 1-100, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No.: 30-2022-01290278-CU-OE-CXC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

1 Plaintiff, JOHNNY GARCIA ("PLAINTIFF"), an individual on behalf of himself and all
2 other similarly situated Class Members (as defined below) and Aggrieved Employees (defined
3 below), hereby files this First Amended Complaint against Defendants WIN-DOR, INC., a
4 California corporation; and DOES 1-100, inclusive, (collectively referred to herein as
5 "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

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

12 **THE PARTIES**

13 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
14 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
15 in the State of California as a non-exempt employee during the relevant period. PLAINTIFF worked
16 for DEFENDANTS, as a non-exempt employee from in or around late May 2022 until on or about
17 July 25, 2022.

18 3. PLAINTIFF worked for DEFENDANTS as a general laborer, warehouse worker
19 and/or other similar title at DEFENDANTS' facility located in Brea, California

20 4. Defendant WIN-DOR, INC is a California corporation that, at all relevant times, was
21 authorized to do business within the State of California and is doing business in the State of
22 California.

23 5. DEFENDANTS own, operate, or otherwise manage a business that manufactures
24 and supplies vinyl windows and doors.¹

25 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
26 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
27 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally

28 ¹ See: <https://www.windorsystems.com/>. Last visited on November 4, 2022.

1 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
2 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
3 become known.

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

14 **JOINT LIABILITY**

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

1 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
2 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
3 employment,” *Id.* at 875 [emphasis added].

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

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

24 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
25 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
26 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
27 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
28 Members’ and Aggrieved Employees’ wages, hours and working conditions, and/or suffered or

1 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
2 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.

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

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

24 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
25 control over, applied the same policies and practices, and engaged in the same acts and omissions
26 with regard to the other Class Members and Aggrieved Employees.

27 **CLASS ALLEGATIONS**

28 15. PLAINTIFF brings this action on behalf of himself, and all others similarly situated

1 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
2 represent are defined as follows and referred to as the "Class" or "Class Members":

3 All current and former non-exempt employees that worked either
4 directly or via a staffing agency for DEFENDANTS at any location
5 in California at any time within the four years and 178 days prior to
6 the filing of the initial Complaint ("Class Period"),²

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

11 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
12 because common questions of law and fact predominate over individual issues.
13 Common questions include, but are not limited to, the following: (1) whether
14 DEFENDANTS understated hours worked and failed to pay all amounts due to
15 PLAINTIFF and the Class Members for wages earned, including minimum and
16 overtime wages, under California law; (2) whether DEFENDANTS provided
17 PLAINTIFF and the Class Members with all meal periods or premium payments
18 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
19 provided PLAINTIFF and the Class Members with all rest periods or premium
20 payments in lieu thereof, in compliance with California law; (4) whether
21 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
22 itemized wage statements in compliance with California law, displaying,
23 including but not limited to, the total hours worked during the pay period; (5)
24 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
25

26 ² In response to the COVID-19 pandemic, the Judicial Council of California
27 adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and
28 repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1,
2020."

1 wages due upon separation of employment; (6) whether DEFENDANTS failed
2 to reimburse PLAINTIFF and the Class Members for all business expenses; and
3 (7) whether DEFENDANTS violated California Business and Professions Code
4 sections 17200, *et seq.*

5 c. Ascertainable Class. The proposed Class is ascertainable as members can be
6 identified and located using information in DEFENDANTS' business, payroll
7 and personnel records.

8 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
9 PLAINTIFF suffered a similar injury as members of the Class as a result of
10 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
11 and pay all owed minimum and overtime wages, failure to provide proper meal
12 periods and rest periods or premium compensation in lieu thereof, failure to
13 provide accurate wage statements, failure to reimburse business expenses, and
14 failure to timely pay all wages due upon separation of employment.

15 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
16 Class Members. PLAINTIFF has no interests adverse to the interests of the other
17 Class Members. Counsel who represent PLAINTIFF are competent and
18 experienced in litigating similar class action cases and are California lawyers in
19 good standing. Counsel for PLAINTIFF have the experience and resources to
20 vigorously prosecute this case.

21 f. Superiority. A class action is superior to other available means for the fair and
22 efficient adjudication of this controversy since individual joinder of all members
23 of the class is impractical. Class action treatment will permit a large number of
24 similarly situated persons to prosecute their common claims in a single forum
25 simultaneously, efficiently, and without the unnecessary duplication of effort
26 and expense that numerous individual actions would engender. Furthermore, as
27 the damages suffered by each individual member of the Class may be relatively
28 small, the expenses and burden of individual litigation would make it difficult

1 or impossible for individual members of the Class to redress the wrongs done to
2 them, while an important public interest will be served by addressing the matter
3 as a class action. The cost to the court system of adjudication of such
4 individualized litigation would be substantial. Individualized litigation would
5 also present the potential for inconsistent or contradictory judgments. Finally,
6 the alternative of filing a claim with the California Labor Commissioner is not
7 superior, given the lack of discovery in such proceedings, the fact that there are
8 fewer available remedies, and the losing party has the right to a trial de novo in
9 the Superior Court.

10 **FACTUAL AND LEGAL ALLEGATIONS**

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

15 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
16 PLAINTIFF worked for DEFENDANTS as a general laborer, warehouse worker and/or other
17 similar title at DEFENDANTS' warehouse facility located in Brea, California, from in or around
18 late May 2022 through on or about July 25, 2022. PLAINTIFF regularly worked at least eight (8)-
19 eleven (11) hours per day, at least five (5) days per week.

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

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

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

7 21. Based on information and belief, Class Members and Aggrieved Employees were
8 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
9 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
10 the clock work policies and/or practices. Based on information and belief, at times, Class Members
11 and Aggrieved Employees were required to stand in line behind other employees to access
12 DEFENDANTS' biometric/electronic employee time-keeping system and/or were required to
13 undergo security screenings and/or had to spend time reinitiating DEFENDANTS'
14 fingerprint/electronic time-keeping system before they could clock in for the start of their shifts.
15 This off-the-clock work, including but not limited to, time spent waiting for other employees to
16 clock in for their shifts, undergoing security screenings and/or reinitiating the time-keeping
17 mechanism, was not compensated, resulting in the underpayment of minimum and overtime wages
18 owed to Class Members and Aggrieved Employees .

19 22. Based on information and belief, DEFENDANTS did not compensate Class
20 Members and Aggrieved Employees for time spent donning and doffing personal protective
21 equipment and/or uniforms/work clothing (e.g., steel-toed boots, reflective vests, protective eyewear
22 grip gloves and/or face masks) during meal periods, before the start of a scheduled shift, and/or after
23 completing a scheduled shift, resulting in off-the-clock work and the underpayment of wages owed
24 to Class Members and Aggrieved Employees .

25 23. Based on information and belief, PLAINTIFF and other Class Members and
26 Aggrieved Employees were required to complete other off-the-clock work tasks after clocking out
27 for the end of their shifts and/or during uncompensated meal periods, resulting in the underpayment
28 of minimum and overtime wages owed to PLAINTIFF and other Class Members and Aggrieved

1 Employees .

2 24. Based on information and belief, at times, DEFENDANTS' biometric/electronic
3 time-keeping system malfunctioned such that Class Members and Aggrieved Employees were
4 required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in
5 and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal
6 periods, resulting in off-the-clock work and the underpayment of wages owed to Class Members
7 and Aggrieved Employees. Based on information and belief, Class Members and Aggrieved
8 Employees experienced the same issues when clocking out for shifts and/or back in for meal periods.
9 This time spent under DEFENDANTS' control was not recorded and not compensated and resulted
10 in unpaid minimum wages owed to Class Members and Aggrieved Employees.

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

16 26. Based on further information and belief, DEFENDANTS implemented a time-
17 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
18 Aggrieved Employees of compensable time because the time-rounding system implemented by
19 DEFENDANTS would almost always, if not always, result in understating actual compensable work
20 time. For example, DEFENDANTS' time records for PLAINTIFF beginning on 7/18/22 through
21 7/25/22 show a consistent shift start or "in" time of precisely 5:00 a.m. for each shift worked from
22 7/18/22 through 7/25/22 and a shift end/ "out" time that is rounded to the nearest quarter hour. For
23 example, from 7/18/22 through 7/25/22, PLAINTIFF's shift end times are rounded to nearest quarter
24 hour and recorded as included but not limited to 1:30 p.m., 2:15 p.m., or 2:45 p.m. Similarly,
25 DEFENDANTS' time records for PLAINTIFF for the same period consistently reflect a meal period
26 taken from precisely 10:15 a.m. to exactly 10:45 a.m. for each shift worked from 7/18/22 to 7/25/22.
27 Likewise, DEFENDANTS' time records as listed on PLAINTIFF's wage statement for PLAINTIFF
28 for the previous pay period, i.e., pay period beginning on 7/4/22 and ending on 7/17/22 evidence

1 that each recorded time entry is rounded to the nearest quarter hour. DEFENDANTS' failure to pay
2 for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful
3 meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and
4 policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and Class Members
5 and Aggrieved Employees as well as unpaid overtime wages for those Class Members and
6 Aggrieved Employees who worked more than eight (8) hours in a day and/or more than forty (40)
7 hours in a week.

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

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

17 29. Based on information and belief, DEFENDANTS failed to incorporate all non-
18 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple
19 base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the
20 owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed
21 to PLAINTIFF and other Class Members and Aggrieved Employees.

22 30. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
23 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
24 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
25 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
26 Based on information and belief, Class Members and Aggrieved Employees were consistently
27 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
28 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due

1 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
2 pressuring them to take non-compliant meal periods or skip meal periods completely.

3 31. Based on information and belief, other Class Members and Aggrieved Employees
4 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
5 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
6 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
7 duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, oftentimes,
8 PLAINTIFF was forced to take an interrupted meal period and/or take his meal period late (i.e. after
9 working more than five hours) due to lack of relief workers, the need to keep up with warehouse
10 deadlines, load the carts and/or trucks, and/or complete other work tasks. Even when PLAINTIFF
11 was required to work through part or all of his owed thirty-minute meal period, DEFENDANTS
12 performed an automatic deduction of at least thirty minutes per shift as though a full thirty-minute
13 off-duty meal period had been taken, when it had not. For instance, DEFENDANTS' time records
14 for PLAINTIFF consistently show that a 30-minute meal period deduction from 10:15 am to 10:45
15 am, resulting in meal period violations and unpaid wages for off-the-clock work performed during
16 the unpaid meal period. Moreover, the time records as displayed on PLAINTIFF's wage statements
17 show that meal periods were consistently provided after the end of the fifth hour of work in violation
18 of California law.

19 32. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
21 DEFENDANTS' control during unpaid meal periods.

22 33. Based on information and belief, DEFENDANTS required Class Members and
23 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
24 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
25 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
26 unaccounted pre-shift off-the-clock work.

27 34. Based on information and belief, despite DEFENDANTS' failure to provide lawful
28 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end

1 times of PLAINTIFF's and other Class Members' and Aggrieved Employees' meal periods and/or
2 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
3 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
4 Members and Aggrieved Employees did not receive lawful meal periods.

5 35. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
6 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
7 compliant thirty (30) minute second meal period. For example, when PLAINTIFF worked shifts
8 lasting longer than ten (10) hours, he was not afforded any version of a second meal period. For
9 example, on 7/18/22, PLAINTIFF's time records show a shift start time of 5:00 am and a shift end
10 time of 5:00 pm, but the records indicate that only a single purported meal period was provided from
11 10:15 am to 10:45 am.

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

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

23 38. Based on information and belief, DEFENDANTS had actual and/or constructive
24 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
25 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
26 Employees, in violation of California's meal period laws.

27 39. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
28 Employees, an additional hour of wages at their respective regular rates of compensation for each

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

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

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

14 **42.** Based on information and belief, DEFENDANTS did not have a have a compliant
15 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
16 practice. For example, DEFENDANTS did not afford PLAINTIFF the opportunity to take any
17 version of a third rest period when he worked shifts that lasted longer than ten (10) hours.

18 **43.** Based on information and belief, Class Members' and Aggrieved Employees' rest
19 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
20 understaffing, the nature and constraints of their job duties, and/or due to commentary from
21 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
22 compliant rest periods.

23 **44.** Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
24 lasting longer than ten hours.

25 **45.** Based on information and belief, DEFENDANTS implemented policies and/or
26 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
27 all duties and DEFENDANTS' control during rest periods.

28 **46.** Based on information and belief, Class Members and Aggrieved Employees were

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

3 47. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
4 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
5 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
6 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
7 period premium for failure to incorporate all non-discretionary remuneration, including but not
8 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
9 regular rate of compensation for purposes of calculating the owed rest period premium.

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

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

27 50. As described herein, based on information and belief, DEFENDANTS also failed to
28 incorporate all forms of non-discretionary compensation earned during the pay period into the

1 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
2 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

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

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

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

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

21 55. These violations subject DEFENDANTS to civil penalties under Labor Code section
22 203, 210, and/or 256.

23 56. **Unreimbursed Business Expenses.** Based on information and belief,
24 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
25 business expenses as a direct consequence of the performance of their job duties without providing
26 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
27 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
28 and maintain work tools that are supposed to be the responsibility of the employer.

1 57. Based on information and belief, DEFENDANTS shifted the costs of doing business
2 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
3 including but not limited to, the use of Class Members and Aggrieved Employees' personal mobile
4 phone and data usage for work related purposes to receive and respond to work related messages
5 and/or phone calls and uniforms/work clothing/shoes, and/or protective equipment/safety gear. For
6 example, DEFENDANTS required that PLAINTIFF supply his own steel-toed boots, reflective
7 vests, protective eyewear and grip gloves to wear for work without reimbursing PLAINTIFF for the
8 expenses he incurred in connection therewith

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

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

18 60. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
19 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
20 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

21 **FIRST CAUSE OF ACTION**

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

24 61. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

8 64. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
9 Class Members for all hours worked.

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **Recovery of Unpaid Overtime Wages**

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

23 67. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 68. Employees in California must be paid overtime, equal to one and one-half times the
25 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
26 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
27 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
28 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
consecutive day of work in a workweek, unless they are exempt.

1 69. As explained above, PLAINTIFF and the Class Members worked overtime hours for
2 which they were not compensated by DEFENDANTS by virtue of, among other things,
3 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
4 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
5 and/or payment according to scheduled hours worked rather than actual hours worked (described
6 above), which resulted in the failure to account for all hours worked and thus the denial of all owed
7 overtime wages.

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

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

19 72. DEFENDANTS' conduct described above is in violation of California Labor Code
20 sections 510 and 1194 and all applicable Wage Orders.

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

23 **THIRD CAUSE OF ACTION**

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

26 74. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 75. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
28 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
meal break free from all duties and employer control for all shifts longer than 5 hours, and a second

1 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
2 waived, but only under the following circumstances: (1) if an employee's total work period in a day
3 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
4 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
5 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
6 waived by mutual consent of the employer and employee, but only if the first meal period was not
7 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
8 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
9 done so.

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

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

20 78. As explained above, DEFENDANTS had and continue to have a policy of rounding
21 the start and end times of employees' meal periods and automatically deducting thirty minutes per
22 shift despite having actual and/or constructive knowledge that PLAINTIFF and Class Members did
23 not receive compliant meal periods.

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

26 80. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
27 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
28 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in

1 violation of California's meal period laws.

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

7 82. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
8 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
9 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
10 all in an amount to be proved at trial.

11 **FOURTH CAUSE OF ACTION**

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

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

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

24 85. If the employer fails to provide any required rest period, the employer must pay the
25 employee one hour of pay at the employee's regular rate of compensation for each workday the
26 employer did not provide at least one legally required rest period, pursuant to Labor Code section
27 226.7.

28 86. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-

1 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
2 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
3 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
4 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
5 skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

24 **FIFTH CAUSE OF ACTION**

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

26 91. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 92. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
28

1 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
2 wage statement accurately stating the following:

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

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

20 94. Moreover, due to violations detailed above, including but not limited to,
21 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
22 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
23 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
24 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
25 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
26 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
27 compensation earned during the pay period into the regular rate of pay for purposes of calculating
28

1 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
2 overtime worked by PLAINTIFF and other Class Members.

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

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

15 97. DEFENDANTS' failure to accurately list all hours worked on all wage statements
16 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
17 Members over whether they received all wages owed to them.

18 98. As a result, PLAINTIFF and other Class Members have suffered injury as they could
19 not easily determine whether they received all wages owed to them and whether they were paid for
20 all hours worked.

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

24 100. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
25 Class Members with accurate, itemized wage statements.

26 101. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
27 have suffered injury. The absence of accurate information on their wage statements has prevented
28 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and

1 mathematical computations to determine the amount of wages owed, and will cause difficulty and
2 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
3 submission of inaccurate information about wages and amounts deducted from wages to state and
4 federal government agencies. As a result, PLAINTIFF and Class Members are required to
5 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
6 and pay records than if DEFENDANT had complied with its legal obligations.

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

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

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

22 **SIXTH CAUSE OF ACTION**

23 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 24 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

25 105. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

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

107. California Labor Code section 202(a) provides, in relevant part, that "[i]f an

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

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

11 109. Under Labor Code section 203, Class Members who are no longer employed by
12 DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’ pay, plus attorney’s
13 fees and costs, in an amount to be proved at trial.

14 **SEVENTH CAUSE OF ACTION**

15 **Failure to Reimburse Business Expenses**

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

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

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

24 112. Among other things, under California law, when employees must use their personal
25 cellphones for work-related purposes, the employer must reimburse them for a reasonable
26 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
27 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
28 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

1 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
2 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

3 113. As described above, Class Members were improperly required to pay for business
4 expenses that are legally the responsibility of the employer.

5 114. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
6 reimbursement for all reasonable expenses associated with carrying out their duties required that
7 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
8 violation of Labor Code section 2802.

9 115. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
10 Members have suffered injury in that they were not completely reimbursed as mandated by
11 California law.

12 116. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
13 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
14 attorneys' fees, and costs of suit.

15 **EIGHTH CAUSE OF ACTION**

16 **Unfair Competition**

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

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

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

1 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
2 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
3 and practices).

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

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

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

21 122. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
22 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
23 by law.

24 **NINTH CAUSE OF ACTION**

Violation of the Private Attorneys General Act of 2004

(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)

25 123. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

26 124. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
27 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
28

1 California and Aggrieved Employees, regarding violations of the California Labor Code as set forth
2 herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

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

7 125. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
8 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
9 limitations period and suffered one or more of the Labor Code violations set forth herein.
10 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
11 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
12 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
13 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
14 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
15 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
16 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

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

18 126. On December 5, 2022, PLAINTIFF, through counsel, gave written notice by online
19 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
20 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
21 in this Complaint ("PAGA Notice").

22 127. The LWDA and/or Division of Occupational Safety and Health did not provide
23 notice of its intention to investigate DEFENDANTS' violations after expiration of the
24 65-day waiting time period, or at any time. To the extent any of the alleged violations were curable,
25 DEFENDANTS failed to cure within the time allotted by PAGA. PLAINTIFF has exhausted the
26 administrative remedies as required by Labor Code section 2699.3. Consequently, PLAINTIFF's
27 right to file the instant lawsuit has duly accrued.

28 128. PLAINTIFF seeks to recover the PAGA civil penalties through a representative

1 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
2 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

3 129. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
4 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
5 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
6 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
7 applicable Wage Orders.

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

14 131. Additionally, DEFENDANTS have violated the following Labor Code sections and
15 provisions of the applicable Wage Order as to the Aggrieved Employees.

16 **Record Keeping Violations**

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

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

1 134. DEFENDANTS' failure to keep "accurate and complete" payroll records for
2 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
3 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
4 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
5 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
6 period during which the referenced statutes and Wage Order provisions were violated.³

7 135. **Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432: Time and Pay**
8 **Records.** Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that
9 employers keep the following information on file for each employee for a minimum of three years:
10 The employee's dates of employment; the employee's hourly rates and the corresponding number
11 of hours worked by the employee at each hourly rate, when the employee begins and ends each work
12 period (including meal periods) and split intervals; total hours worked by the employee; all
13 deductions; gross wages earned; and net wages earned.

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

23 137. **Personnel Records.** In addition to their right to time and pay records, employees, and
24 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to

25 ³ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
2 section 432 further specifies that employers must furnish copies of all employment records bearing
3 the employee's signature.

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

9 139. Based on information and belief, DEFENDANTS fail to timely produce or make
10 available a current or former employee's personnel records and/or payroll records when requested
11 pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example,
12 on September 28, 2022, PLAINTIFF sent a written request for payroll and personnel records to
13 DEFENDANTS. Yet, DEFENDANTS failed to timely produce complete records within the time
14 periods delineated by California labor law. Based on information and belief, DEFENDANTS failed
15 and continue to fail to timely produce complete time, pay, and personnel records when requested by
16 other Aggrieved EMPLOYEES. Based on information and belief, EMPLOYER failed and continues
17 to fail to timely produce complete payroll and personnel records when requested by other Aggrieved
18 Employees.

19 140. These violations subject DEFENDANTS to penalties under Labor Code sections
20 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for
21 each Aggrieved Employee, results in a separate civil penalty.

22 **Standard Conditions of Labor Violations**

23 141. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
24 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
25 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
26 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
27 violations with respect to meal periods, rest periods, record keeping provisions, suitable seating,
28 business expenses, and minimum/overtime wages result in separate violations of sections 1198 and

1 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

2 **Refusal to Make Payment**

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

11 **Statutory Wage Violations**

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

23 **Sick Leave Violations**

24 144. DEFENDANTS violated California's paid sick leave laws including, Labor Code
25 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
26

27 ⁴ 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 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
2 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
3 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
4 not limited to, non-discretionary bonuses/incentive pay, shift differential pay, multiple base rates of
5 pay and/or other non-discretionary compensation into the sick leave pay rate calculation.

6 145. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
7 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
8 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
9 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
10 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

15 147. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
16 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
17 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
18 were entitled to the maximum number of hours accruable.

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

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

25 150. On information and belief, PLAINTIFF alleges that all of these practices were
26 experienced and continue to be experienced by other Aggrieved Employees.

27 151. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
28 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and

1 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

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

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

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

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

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

9 158. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
10 other Aggrieved Employees with suitable seating, and when such employees were not engaged in
11 duties which required them to stand, no seating was placed in reasonable proximity to their
12 workstations.

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

19 160. The Aggrieved Employees worked in various positions, including but not limited to,
20 warehouse workers, general laborers, and/or similar titles. The nature of PLAINTIFF's and other
21 Aggrieved Employees' work reasonably permitted the use of seats. However, DEFENDANTS
22 failed to provide suitable seating in reasonable proximity to Aggrieved Employees' work areas in
23 violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199,
24 subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each
25 violation of each Labor Code section and IWC Wage Order provision, for each Aggrieved
26 Employee, results in a separate civil penalty.

27 **Unlawful Deductions**

28 161. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from

1 an employee any part of wages theretofore paid by said employer to said employee.” Based on
2 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees’
3 paychecks during the relevant period, by including but not limited to unlawfully deducting wages
4 paid in previous pay periods, costs of uniforms, and/or costs advanced by DEFENDANTS from
5 Aggrieved Employees’ final paychecks. Such a practice is in violation of including but not limited
6 to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor
7 Code Section 2699. Each violation results in a separate civil penalty, for each Aggrieved Employee,
8 for each pay period during which the statute provisions were violated. See Lab. Code §225.5
9 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
10 provided in this article, every person who unlawfully withholds wages due any employee in
11 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
12 to pay each employee”).

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

14 **Unlawful Agreements**

15 162. Labor code section 432.5 provides that “no employer...shall require any employee
16 or applicant for employment to agree, in writing, to any term or condition which is known by such
17 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
18 PLAINTIFF, and other Aggrieved Employees to agree in writing to unlawful conditions of
19 employment including but not limited to , unlawful non-compete agreements and/or non-solicitation
20 agreements, unlawful confidentiality agreements, and/or unlawful criminal and/or financial checks,
21 as a condition of obtaining and/or continuing employment in violation of labor code section 432.5.

22 163. The California Labor Code places certain procedural and substantive limits on
23 employers’ ability to conduct employee background checks and on how employers can use the
24 information they obtain through those background checks. Labor code section 1024.5 states that
25 employers, except for financial institutions, may order a credit check only if the individual works
26 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
27 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
28 Act (ICRAA- ca civil code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15

1 U.S.C. Section 1681, *et seq.*) mandate several requirements prior to and following an employee
2 background check, including but not limited to identifying an appropriate reason for the background
3 check, a separate consent form with required disclosures and certain formatting requirements,
4 additional forms such as a summary of rights, a way by which to request a copy of the report, as
5 well as proper notice of adverse actions taken, among other statutory requirements.

6 164. Based on information and belief, DEFENDANTS ordered unlawful financial credit
7 checks on Aggrieved Employees, in violation of labor code section 1024.5, and required aggrieved
8 employees to provide ongoing written consent to the unlawful credit checks as a condition of
9 employment, in violation of California and Federal law, which results in a further violation of labor
10 code section 432.5.

11 165. Based on information and belief, DEFENDANTS also required Aggrieved
12 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
13 a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For
14 example, DEFENDANTS required PLAINTIFF to submit and/or agree to submit in writing to an
15 unlawful criminal background check as a condition of obtaining and/or holding employment and
16 conducted a criminal background check on PLAINTIFF. For example, DEFENDANTS' purported
17 background check disclosure was not clear and conspicuous and was therefore unlawful, for, among
18 other reasons, it contains irrelevant information, including but not limited to, irrelevant information
19 pertaining to other states (e.g., Minnesota and Oklahoma).

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

1 background check.

2 167. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
3 financial checks not in conformance with the applicable laws, DEFENDANTS violated labor code
4 section 432.5.

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

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

13 170. By requiring Aggrieved Employees agree in writing to unlawful provisions as a
14 condition of employment, DEFENDANTS violated labor code section 432.5.

15 Unlawful inquiries into criminal history

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

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

25 173. By asking about arrests not resulting in convictions, DEFENDANTS violated labor
26 code section 432.7. By asking about convictions at the application phase or prior to extending an
27 employment offer, employer violated California's Fair Chance Act, and thereby violated labor code
28 section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to disclose arrests

1 and/or convictions as a condition of employment.

2 **Failure to Provide a Safe and Healthful Workplace.**

3 174. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the
4 California Occupational Safety and Health Act ("Cal OSHA"), employers must maintain a safe and
5 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

6 175. (a) Every employer shall furnish employment and a place of employment that is safe
7 and healthful for the employees therein...

8 176. Labor Code section 6401 provides as follows:

9 177. Every employer shall furnish and use safety devices and safeguards, and shall adopt
10 and use practices, means, methods, operations, and processes which are reasonably adequate to
11 render such employment and place of employment safe and healthful. Every employer shall do every
12 other thing reasonably necessary to protect the life, safety, and health of employees.

13 178. Labor Code section 6402 prohibits the following:

14 179. No employer shall require, or permit any employee to go or be in any employment
15 or place of employment which is not safe and healthful.

16 180. Similarly, Labor Code section 6404 provides as follows:

17 181. No employer shall occupy or maintain any place of employment that is not safe and
18 healthful.

19 182. In addition to the above, Labor Code section 6403 requires that employees provide
20 safety devices to its employees. Labor Code section 6403 states:

21 183. No employer shall fail or neglect to do any of the following:

22 184. (a) To provide and use safety devices and safeguards reasonably adequate to render
23 the employment and place of employment safe.

24 185. (b) To adopt and use methods and processes reasonably adequate to render the
25 employment and place of employment safe.

26 186. (c) To do every other thing reasonably necessary to protect the life, safety, and health
27 of employees.

28 187. Similarly, Labor Code section 6406(d) states the following:

1 188. No person shall do any of the following ... (d) Fail or neglect to do every other thing
2 reasonably necessary to protect the life, safety, and health of employees.

3 189. Finally, Labor Code section 6407 provides:

4 190. Every employer and every employee shall comply with occupational safety and
5 health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations,
6 and orders pursuant to this division which are applicable to his own actions and conduct.

7 191. Moreover, Labor Code section 6409.6 sets forth the actions an employer (or
8 representative of employer) must take within one business day of receiving notice of potential
9 exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

10 192. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
11 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
12 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and
13 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
14 which are reasonably adequate to render such employment and place of employment safe and
15 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
16 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
17 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor
18 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
19 failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render
20 the employment and place of employment safe; adopt and use methods and processes reasonably
21 adequate to render the employment and place of employment safe; and do every other thing
22 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
23 section 6403.

24 193. PLAINTIFF is informed and believes and thereon alleges that these failures include,
25 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
26 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
27 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
28 conditions between PLAINTIFF and/or other Aggrieved Employees.

1 194. At all relevant times, DEFENDANTS had a policy and practice of failing to give
2 sufficient, adequate and proper notice to PLAINTIFF and/or other Aggrieved Employees of the
3 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace
4 exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is
5 informed and believes that numerous employees contracted COVID-19 during the relevant time
6 periods, but that DEFENDANTS failed to provide notice to employees. Based on further
7 information and belief, DEFENDANTS do not or did not keep adequate records of written
8 notifications required in subdivision (a) for a period of at least three years.

9 195. At all relevant times, DEFENDANTS had and have a policy and practice of failing
10 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
11 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
12 Employees and/or their exclusive representatives, who were on the premises at the same worksite
13 as a qualifying individual who was within the infectious period that they may have been exposed to
14 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
15 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
16 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
17 Employees who were on the premises at the same worksite as the qualifying individual within the
18 infectious period and the exclusive representative, if any, with information regarding COVID-19-
19 related benefits to which the employee may be entitled under applicable federal, state or local laws,
20 including but not limited to, workers' compensation, and options for exposed employees, including
21 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
22 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
23 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
24 6432.

25 196. At all relevant times, DEFENDANTS had and have a policy and practice of failing
26 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
27 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
28 who were on the premises at the same worksite as the qualifying individual within the infectious

1 period, and the employers of the subcontracted employees who were on the premises at the same
2 worksite as the qualifying individual within the infectious period and the exclusive representative,
3 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
4 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
5 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
6 without limitation, Labor Code sections 6409.6 and 6432.

7 197. At all relevant times, DEFENDANTS had and have a policy and practice of failing
8 to notify the local public health agency in the jurisdiction of the worksite of the names, number,
9 occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as
10 defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed
11 health care provider; a COVID-19 related order to isolate provided by a public health official; or
12 died due to COVID-19, in the determination of a county public health department or per inclusion
13 in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation,
14 Labor Code sections 6409.6 and 6432.

15 198. PLAINTIFF is informed and believes , and based thereon alleges that
16 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
17 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
18 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
19 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
20 blowers.

21 199. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
22 violated the Labor Code sections described herein, including without limitation, for failure to:
23 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to
24 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other
25 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual
26 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
27 California and local laws.

28 200. Based on information and belief, DEFENDANTS failed to protect Aggrieved

1 Employees from exposure to COVID-19 due to, including but not limited to, failing to
2 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
3 hazards related to the COVID-19 virus.

4 201. As such, DEFENDANTS failed to comply with the occupational safety and health
5 standards, failed to do everything reasonably necessary to protect the health and safety of
6 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
7 necessary to maintain a safe and healthful workplace.

8 202. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
9 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
10 is subject to civil penalties.

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

13 204. Under the provisions of PAGA and the following Labor Code sections, including but
14 not limited to, Labor Code sections, 201-203, 210, 216, 221-223, 225.5, 226, 226.7, 245-248.6, 256,
15 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699,
16 2699.3, 2802, 2810.5, 6400-6404, 6406-6407, 6409.6, 6432 and all relevant sections of the
17 applicable Wage Orders, as well as all interpretations of these laws by California Courts and
18 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
19 are liable for the following penalties:

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

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

206.

PRAYER FOR RELIEF

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

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

Dated: March 1, 2023

CROSNER LEGAL, PC

By: 

Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff,
JOHNNY GARCIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: March 1, 2023

CROSNER LEGAL, PC

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

1 PROOF OF SERVICE
2 JOHNNY GARCIA VS. WIN-DOR, INC. et al.
Orange County Superior Court Case No. 30-2022-01290278-CU-OE-CXC

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

5 On March 8, 2023, I served true copies of the following document(s) described as

6 **FIRST AMENDED CLASS ACTION COMPLAINT**
7 on the interested parties in this action as follows:

8 SEE ATTACHED SERVICE LIST

9 ☐ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced
10 document(s) on the interested parties in this action by electronic transmission. Said electronic
transmission was reported as complete and without error.

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

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

21 ☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format
22 and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal
(letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth
23 herein. I caused an envelope containing the documents to be placed for collection and mailing and
to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream,
24 Inc.'s ordinary business practices. I am readily familiar with our business practices and the
business practices of Letterstream, Inc. for collecting and processing correspondence for mailing.
25 On the same day that correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with Federal Express, an express carrier, in Phoenix, Arizona, or
26 delivered with any and all delivery fees to an authorized courier or driver authorized by the
express service carrier to receive documents.

27
28 I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct and that I am employed in the office of a member of the bar of this

1 Court at whose direction the service was made.

2 Executed on March 8, 2023 at Los Angeles, California.

3
4 
5 Jessica Ball

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST
JOHNNY GARCIA VS. WIN-DOR, INC. et al.
Orange County Superior Court Case No. 30-2022-01290278-CU-OE-CXC

Heather B. Dillion, Esq. JACKSON LEWIS P.C. 200 Spectrum Center Dr. Suite 500 Irvine, CA 92618 Direct: (949) 885-5242 Main: (949) 885-1360 Mobile: (310) 200-9482 Heather.Dillion@jacksonlewis.com Peter.Woo@jacksonlewis.com Derek.Sutter@jacksonlewis.com Jeremy.Lewis@jacksonlewis.com	Attorney for Defendants WIN-DOR, INC.
--	--