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As an individual and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PORTIA BARTLEY, as an individual on
behalf of herself and on behalf of all others
similarly situated,

Plaintiff,

v.

UNIVERSAL TELEVISION LLC, a New
York limited liability company; and DOES
1-100, inclusive,

Defendants.

Case No.: 22STCV36428

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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
2 Plaintiff, PORTIA BARTLEY (“PLAINTIFF”), an individual on behalf of herself and all
3 other similarly situated Class Members (as defined below) and Aggrieved Employees (as defined
4 below), hereby files this First Amended Complaint against Defendants UNIVERSAL
5 TELEVISION LLC, a New York limited liability company; and DOES 1-100, inclusive,
6 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
7 thereon alleges as follows:

8 **JURISDICTION AND VENUE**

9 1. This court possesses original subject matter jurisdiction over this matter. Venue is
10 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
11 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
12 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
13 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
14 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
15 where the defendants committed Labor Code violations against some of its employees). Venue is
16 also proper pursuant to section 393 of the California Code of Civil Procedure because the cause, or
17 some part of the cause, arose in the County of Los Angeles.

18 **THE PARTIES**

19 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
20 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
21 in the State of California as a non-exempt employee from in or around mid-September 2021 through
22 on or about February 17, 2022.

23 3. PLAINTIFF worked for DEFENDANTS as a Covid testing coordinator, Covid
24 testing assistant, Covid testing consultant and/or similar title(s) at one of the production
25 lots/facilities owned, operated, and/or managed by DEFENDANTS, in Los Angeles, California.

26 4. DEFENDANTS is a New York limited liability company that, at all relevant times,
27 were authorized to do business within the State of California and are doing business in the State of
28 California.

5. DEFENDANTS own, operate, or otherwise manage a television production company.

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

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

JOINT LIABILITY

8. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment relationship. Supervision of the work, in the specific sense of exercising control over how services are properly performed, is properly viewed as one of the “working conditions” mentioned in the wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a

1 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
2 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
3 California, applying a less stringent standard to what constitutes sufficient control by a business
4 over its vendor's employees' wages and working conditions to render that business liable as a joint
5 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); "[i]f the putative
6 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
7 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
8 employment," *Id.* at 875 [emphasis added].

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

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

1 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

2 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
3 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
4 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
5 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
6 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
7 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
8 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.
9 For example, DEFENDANTS, and each of them, are identified on DEFENDANTS' issued wage
10 statements to PLAINTIFF as the name of the employer.

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

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

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

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

7 **CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

25 f. Superiority. A class action is superior to other available means for the fair and
26 efficient adjudication of this controversy since individual joinder of all members
27 of the class is impractical. Class action treatment will permit a large number of
28 similarly situated persons to prosecute their common claims in a single forum

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

14 **FACTUAL AND LEGAL ALLEGATIONS**

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

19 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
20 PLAINTIFF worked for DEFENDANTS as a Covid testing coordinator, Covid testing assistant,
21 Covid testing consultant and/or similar title(s) from in or around mid-September 2021 through on
22 or about February 17, 2022. PLAINTIFF was assigned by DEFENDANTS to work at a production
23 lot/facility owned, operated and/or managed by DEFENDANTS, in Los Angeles, California.
24 PLAINTIFF regularly worked at least ten (10) to thirteen (13) hours per day, at least five (5) days
25 per week.

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

28 19. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
2 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF
3 and Class Members and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
4 automatic deduction and time rounding policies, and failure to relieve employees of all
5 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
6 improper meal periods, as explained below.

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

13 21. Based on information and belief, Class Members and Aggrieved Employees were
14 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
15 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
16 the clock work policies and/or practices. Based on information and belief, DEFENDANTS engaged
17 in systemic time record manipulation to shave time worked off PLAINTIFF and other Class
18 Members and Aggrieved Employees' workdays, by, for example, manually editing electronic time
19 records to delete portions of total hours worked or otherwise understate actual hours worked by
20 PLAINTIFF and other Class Members and Aggrieved Employees. For example, PLAINTIFF
21 recalls there being multiple occasions on which PLAINTIFF's supervisor deleted portions of total
22 hours worked on PLAINTIFF's timecard or otherwise understated actual hours worked by
23 PLAINTIFF. PLAINTIFF estimates this resulted in at least five (5) hours of uncompensated work
24 time and the underpayment of wages owed to PLAINTIFF.

25 22. Additionally, PLAINTIFF and other Class Members and Aggrieved Employees were
26 required to perform other pre-shift and/or post-shift off-the-clock work for which they were not
27 compensated. For example, on information and belief, at times, DEFENDANTS'
28 electronic/employee time-keeping system at times malfunctioned such that Class Members and

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

8 23. Class Members and Aggrieved Employees were also pressured to complete at least
9 some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations.
10 For example, on information and belief, PLAINTIFF and other Class Members and Aggrieved
11 Employees were also required to complete off-the-clock work outside of scheduled shifts due to
12 work-related phone calls and/or messages they received to their personal phones and were required
13 to respond to, including but not limited to, communications from supervisors regarding scheduling
14 and/or other work tasks, resulting in the underpayment of wages owed to Class Members and
15 Aggrieved Employees.

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

21 25. Based on further information and belief, DEFENDANTS implemented a time-
22 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
23 Aggrieved Employees of compensable time because the time-rounding system implemented by
24 DEFENDANTS would almost always, if not always, result in understating actual compensable work
25 time. For example, DEFENDANTS' wage statements issued to PLAINTIFF evidence rounding of
26 PLAINTIFF's hours worked to at least the nearest half hour. For instance, DEFENDANTS' wage
27 statement for PLAINTIFF for pay period beginning on 9/19/21 through 9/25/21 shows precisely
28 40.0 regular hours and precisely 20.0 overtime hours; DEFENDANTS' issued wage statement to

1 PLAINTIFF for pay period beginning on 9/26/21 through 10/2/21 shows precisely 32.0 regular
2 hours and precisely 14.5 overtime hours; DEFENDANTS' issued wage statement to PLAINTIFF
3 for pay period beginning on 10/3/21 through 10/9/21 shows precisely 40.0 regular hours and 19.5
4 overtime hours; DEFENDANTS' issued wage statement to PLAINTIFF for pay period beginning
5 on 11/28/21 through 12/4/21 shows precisely 40.0 regular hours and precisely 17.0 overtime hours;
6 DEFENDANTS' issued wage statement to PLAINTIFF for pay period beginning on 12/5/21
7 through 12/11/21 shows precisely 40.0 regular hours and 20.0 overtime hours; and DEFENDANTS'
8 issued wage statement for PLAINTIFF for pay period beginning on 1/16/22 through 1/22/22 shows
9 precisely 32.0 regular hours and precisely 23.0 overtime hours.

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

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

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

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

1 Class Members and Aggrieved Employees.

2 30. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
3 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
4 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
5 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
6 Based on information and belief, Class Members and Aggrieved Employees were consistently
7 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
8 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
9 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
10 pressuring them to take non-compliant meal periods or skip meal periods completely.

11 31. Based on information and belief, other Class Members and Aggrieved Employees
12 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
13 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
14 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
15 duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, during at
16 least half of PLAINTIFF's shifts, PLAINTIFF recalls being required to take a shortened, interrupted
17 and/or late meal period (i.e. past the fifth hour of work) due to the need to complete work tasks, lack
18 of coverage and/or lack of relief workers available. Based on information and belief, PLAINTIFF's
19 supervisor edited and/or manipulated time records so that it would appear as though PLAINTIFF
20 had taken a full thirty-minute off-duty meal period before the end of the fifth hour of work when
21 she had not. Based on information and belief, other Class Members and Aggrieved Employees were
22 also consistently forced to take late, shortened and/or interrupted meal periods and/or skip their meal
23 periods completely due to the need to keep up with production deadlines, complete work tasks, lack
24 of coverage and/or lack of relief workers available. On information and belief, DEFENDANTS had
25 and continue to have a uniform policy and practice of clocking out Class Members and Aggrieved
26 Employees and/or requiring other Class Members and Aggrieved Employees to clock out for meal
27 periods that were worked through, interrupted, cut short and/or on duty.

28 32. Based on information and belief, DEFENDANTS implemented policies and/or
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
2 DEFENDANTS' control during unpaid meal periods.

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

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

14 35. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
15 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
16 compliant thirty (30) minute second meal period. For example, PLAINTIFF consistently worked
17 shifts exceeding ten and/or twelve hours but was not provided with any version of a second meal
18 period, and any purported first meal period was typically late and/or worked through.

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

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

1 58.

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

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

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

17 41. PLAINTIFF and other Class Members and Aggrieved Employees were not
18 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
19 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
20 nor instruction as to the taking of duty-free rest periods. For example, PLAINTIFF recalls having
21 to work through her owed rest periods on most if not all shifts she worked due to the need to
22 complete work tasks, lack of coverage and/or lack of relief workers. Rest periods were only taken,
23 if at all, once work tasks were completed and/or as time allowed, and DEFENDANTS discouraged
24 the taking of rest periods. For example, on least one occasion, PLAINTIFF recalls being criticized
25 and/or reprimanded by her supervisor for trying to take a rest break.

26 42. Based on information and belief, DEFENDANTS did not have a have a compliant
27 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
28 practice.

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

6 44. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
7 lasting longer than ten hours. For example, when PLAINTIFF worked shifts exceeding ten hours,
8 PLAINTIFF was not provided with any version of a third rest period.

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

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

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

22 48. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
23 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
24 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
25 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
26 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
27 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
28 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee.

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

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

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

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

22 53. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
23 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
24 Employees all wages that were due and owing upon termination or resignation. Based on
25 information and belief, DEFENDANTS untimely provide final wages to Class Members and
26 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.
27 Upon separation of employment, Class Members and Aggrieved Employees' final paychecks were
28 not timely provided and/or were not timely provided with all owed vacation pay and/or paid time

1 off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final paychecks, once
2 provided, did not include all wages owed as they were devoid of, including but not limited to, all
3 owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave
4 and/or paid time off wages at the properly accrued rates. For example, PLAINTIFF received her
5 final paycheck at least several days after her date of termination, and her final paycheck was devoid
6 of all wages owed to her, including but not limited to, all owed minimum wages, overtime wages,
7 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
8 accrued rates.

9 54. These violations subject DEFENDANTS to civil penalties under Labor Code section
10 203, 210, and/or 256.

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

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

27 57. Additionally, based on information and belief, Class Members and Aggrieved
28 Employees were not reimbursed for DEFENDANTS' business use of their personal vehicles,

1 including mileage, wear and tear on the vehicles, and gas. On information and belief, at times,
2 DEFENDANTS purported to compensate for some vehicle-related expenses, however, any
3 amount(s) offered fell far below the Internal Revenue Service (IRS) mandated per mile
4 compensation for the relevant period.

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

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

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

17 **FIRST CAUSE OF ACTION**

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

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

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

26 63. DEFENDANTS violated California's minimum wage laws by failing to compensate
27 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
28 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,

1 and/or payment according to scheduled hours worked rather than actual hours worked (described
2 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
3 wages.

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

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

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

15 **SECOND CAUSE OF ACTION**

16 **Recovery of Unpaid Overtime Wages**

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

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

19 68. Employees in California must be paid overtime, equal to one and one-half times the
20 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
21 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
22 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
23 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.

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

1 failure to account for all hours worked and thus the denial of all owed overtime wages.

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

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

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

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

17 **THIRD CAUSE OF ACTION**

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

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

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

1 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
2 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
3 done so.

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

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

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

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

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

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

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

5 **FOURTH CAUSE OF ACTION**
6 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
7 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

19 85. If the employer fails to provide any required rest period, the employer must pay the
20 employee one hour of pay at the employee's regular rate of compensation for each workday the
21 employer did not provide at least one legally required rest period, pursuant to Labor Code section
22 226.7.

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

 87. Based on information and belief, DEFENDANTS implemented policies and/or

1 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
2 control during rest periods. Based on further information and belief, Class Members were pressured
3 to complete their work duties according to a designated schedule such that rest periods were only
4 taken once tasks were completed, and/or as time permitted.

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

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

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

18 **FIFTH CAUSE OF ACTION**

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

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

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

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

1 employee is paid, (7) the name of the employee and his or her social
2 security number, except that by January 1, 2008, only the last four
3 digits of his or her social security number or an employee
4 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.

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

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

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

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

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

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

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

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

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

18 101. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
19 have suffered injury. The absence of accurate information on their wage statements has prevented
20 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
21 mathematical computations to determine the amount of wages owed, and will cause difficulty and
22 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
23 submission of inaccurate information about wages and amounts deducted from wages to state and
24 federal government agencies. As a result, PLAINTIFF and Class Members are required to
25 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
26 and pay records than if DEFENDANT had complied with its legal obligations.

27 102. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
28 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226

1 violation occurred and one hundred dollars per employee per violation for each subsequent pay
2 period, not to exceed an aggregate penalty of four thousand dollars per employee.

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

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

14 **SIXTH CAUSE OF ACTION**
15 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
16 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

21 107. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
22 employee not having a written contract for a definite period quits his or her employment, his or her
23 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
24 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
25 to his or her wages at the time of quitting."

26 108. Based in information and belief, DEFENDANTS failed and continue to fail to timely
27 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
28 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
Members do not include all wages owed as they are devoid of, including but not limited to, all owed

1 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
2 paid time off wages at the properly accrued rates.

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

6 **SEVENTH CAUSE OF ACTION**
7 **Failure to Reimburse Business Expenses**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

Unfair Competition

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

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

119. Due to DEFENDANTS' unfair and unlawful business practices in violation of the California Labor Code, DEFENDANTS have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate

1 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
2 minimum and overtime wages and to pay all wages due upon separation of employment of their
3 employees.

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

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

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

16
17 **NINTH CAUSE OF ACTION**
18 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
19 **2698, *ET SEQ.***
20 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
21 **DEFENDANTS)**

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

26 All current and former non-exempt employees that worked either directly or via a staffing
27 agency for any DEFENDANTS at any location in California at any time from one year plus
28 65 days from the filing of the initial Complaint through the present ("PAGA Period").

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

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

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

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

15 126. The LWDA and/or Division of Occupational Safety and Health did not provide
16 notice of its intention to investigate DEFENDANTS' violations after expiration of the statutorily-
17 mandated waiting-time period(s), or at any time. To the extent any of the alleged violations were
18 curable, DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF
19 has exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,
20 PLAINTIFF's right to file the instant lawsuit against DEFENDANTS has duly accrued.

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

24 128. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
25 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
26 Labor Code sections, 201-203, 210, 216, 221-223, 225.5, 226, 226.7, 245-248.6, 256, 432, 432.5,
27 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802,
28 2810.5, 6400-6404, 6406-6407, 6409.6, 6432, and all applicable Wage Orders.

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

7 130. Additionally, DEFENDANTS have violated the following Labor Code sections and
8 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

9 **Failure to Keep Accurate Records**

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

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

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

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

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

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

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

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

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

1 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

2 **Meal Period Violations**

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

8 139. Employers must also provide employees with a second duty-free, uninterrupted thirty
9 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
10 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
11 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
12 hours but no more than six (6) hours, the required meal period may be waived by mutual consent of
13 the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
14 hours but no more than twelve (12) hours, the required second meal period may be waived by mutual
15 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

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

24 141. Employers must pay employees an additional hour of wages at the employees'
25 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
26 meal period, first meal period provided after five (5) hours, second meal period provided after 10
27 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to
28 provide an employee a meal period in accordance³³ with the applicable provision of this Order, the

1 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
2 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

3 142. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
4 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
5 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
6 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
7 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
8 periods completely. Based on further information and belief, meal periods were also late or cut short
9 in part due to DEFENDANTS' time rounding policies and practices as alleged above.

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

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

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

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

25 147. These unlawful meal period policies and practices result in violations of Labor Code
26 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
27 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
28 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §

1 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

2 **Rest Period Violations**

3 148. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
4 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
5 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
6 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
7 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
8 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
9 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
10 1029). The rest period requirement obligates employers to permit and authorize employees to take
11 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
12 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
13 257. If the employer fails to provide any required rest period, the employer must pay the employee
14 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
15 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
16 applicable IWC Wage Order, §12(B).

17 149. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
18 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
19 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
20 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
21 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
22 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

11 **Minimum and Overtime Wage Violations**

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

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

25 156. DEFENDANTS violated California's minimum and overtime wage laws by failing
26 to compensate PLAINTIFF and the Aggrieved Employees for all hours worked by virtue of, among
27 other things, DEFENDANTS' time rounding policies and practices (for shift start and end times and
28 meal period start and end times), automatic deduction for meal periods, off-the-clock/unpaid work

1 completed during meal periods, and/or other otherwise off-the-clock work (described above), which
2 resulted in the failure to account for all hours worked and thus the denial of minimum and overtime
3 wages.

4 157. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
5 Aggrieved Employees for all hours worked.

6 158. Based on information and belief, DEFENDANTS had actual or constructive
7 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
8 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
9 periods, and/or other off-the-clock work resulted in the underpayment of minimum and overtime
10 wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

22 161. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
23 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
24 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
25 Wage Orders, section 20.

26 **Statutory Wage Violations**

27 162. California Labor Code section 223 makes it unlawful for an employer to secretly pay
28 wages lower than required by statute while purporting to pay legal wages. As described above,

1 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
2 earned minimum and overtime compensation for all hours worked which resulted in the payment of
3 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
4 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
5 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
6 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
7 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
8 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
9 Labor Code § 2699(f)-(g).

10 **Refusal to Make Payment**

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

19 **Unlawful Deductions**

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

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

1 to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor
2 Code Section 2699. Each violation results in a separate civil penalty, for each Aggrieved Employee,
3 for each pay period during which the statute provisions were violated. See Lab. Code §225.5
4 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
5 provided in this article, every person who unlawfully withholds wages due any employee in
6 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
7 to pay each employee”).

8 **Business Expense Violations**

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

15 166. Among other things, under California law, when employees must use their personal
16 cellphones for work-related purposes, the employer must reimburse them for a reasonable
17 percentage of their cell phone bills. See *Cochran v. Schwan’s Home Services, Inc.* (2014) 228
18 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
19 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
20 *Id.* 1144-1145.

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

25 168. As described above, PLAINTIFF and the Aggrieved Employees were improperly
26 required to pay for business expenses that are legally the responsibility of the employer, including
27 but not limited to costs associated with the purchase and/or maintenance of
28 uniforms/clothing/safety/protective equipment, personal tools, and costs associated with the use of

1 personal vehicles and/or the use of Aggrieved Employees' personal mobile phones/personal
2 computers, and data usage for work-related purposes.

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

7 170. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
8 Employees have suffered injury in that they were not completely reimbursed as mandated by
9 California law.

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

14 172. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
15 Employees have suffered injury in that they were not completely reimbursed as mandated by
16 California law.

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

21 **Wage Statement Violations**

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

1 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

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

28 178. Furthermore, DEFENDANTS violated Labor Code section 226(a), including but not
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1 limited to, section 226(a)(9), by failing to display the proper overtime rate(s) for each hour of
2 overtime worked by Aggrieved Employees. For example, as described herein, based on information
3 and belief, DEFENDANTS failed to incorporate all forms of non-discretionary compensation
4 earned during the pay period into the overtime pay rate calculation, and as such, failed to display
5 the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other Aggrieved
6 Employees.

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

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

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

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

20 183. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
21 Aggrieved Employees with accurate, itemized wage statements.

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

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

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

6 **Seating Violations**

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

10 187. *All applicable IWC Wage Orders, Section 14(A-B) provides:*

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

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

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

21 191. *Based on information and belief, DEFENDANTS failed to provide Aggrieved*
22 *Employees with suitable seating, and when such employees were not engaged in duties which*
23 *required them to stand, no seating was placed in reasonable proximity to their workstations.*

24 192. *Moreover, based on information and belief, the nature of the work reasonably*
25 *permitted the use of seats for at least part of the time that PLAINTIFF and other Aggrieved*
26 *Employees were working. Lastly, there were periods of time when PLAINTIFF and other Aggrieved*
27 *Employees were not engaged in active duties of their employment, yet there were no suitable seats*

28 ³ Labor Code § 226.3 (establishing that the civil penalty is ~~43~~ ³ per employee per violation”).

1 in reasonable proximity to the work area and use of seats would not interfere with the performance
2 of their duties.

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

10 **Standard Conditions of Labor Violations**

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

18 **Sick Leave Violations**

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

26 196. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
27 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
28 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used

1 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
2 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

7 198. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
8 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
9 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
10 were entitled to the maximum number of hours accruable.

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

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

17 201. On information and belief, PLAINTIFF alleges that all of these practices were
18 experienced and continue to be experienced by other Aggrieved Employees.

19 202. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
20 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
21 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

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

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

1 Labor Code section 248.6.

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

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

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

14 **Untimely Payment of Final Wages**

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

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

28 208. Based on information and belief, DEFENDANTS failed and continue to fail to timely

1 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
2 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
3 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
4 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
5 sick leave and/or paid time off wages at the properly accrued rates.

6 209. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
7 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
8 256.

9 **Unlawful Agreements/Unlawful Background Checks; Unlawful Criminal History**
10 **Inquiries**

11 **Unlawful Agreements/Unlawful Background Checks**

12 210. Labor Code section 432.5 provides that “no employer...shall require any employee
13 or applicant for employment to agree, in writing, to any term or condition which is known by such
14 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
15 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
16 limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
17 employment in violation of Labor Code section 432.5. The California Labor Code places certain
18 procedural and substantive limits on an employers’ ability to conduct employee background checks
19 and on how employers can use the information they obtain through those background checks. Labor
20 Code section 1024.5 states that employers, except for financial institutions, may order a credit check
21 only if the individual works (or is applying to work) in certain positions (e.g., managerial positions,
22 financially-related positions, and certain government positions). Additionally, the Investigative
23 Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair
24 Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior
25 to and following an employee background check, including but not limited to identifying an
26 appropriate reason for the background check, a separate consent form with required disclosures and
27 certain formatting requirements, additional forms such as a summary of rights, a way by which to
28 request a copy of the report, as well as proper notice of adverse actions taken, among other statutory

1 requirements.

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

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

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

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

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

19 Unlawful Inquires into Criminal History

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

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

1 218. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
2 Code section 432.7. By asking about convictions at the application phase or prior to extending an
3 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
4 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
5 disclose arrests and/or convictions as a condition of employment.

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

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

10 220. (a) Every employer shall furnish employment and a place of employment that is safe
11 and healthful for the employees therein...

12 221. Labor Code section 6401 provides as follows:

13 222. Every employer shall furnish and use safety devices and safeguards, and shall adopt
14 and use practices, means, methods, operations, and processes which are reasonably adequate to
15 render such employment and place of employment safe and healthful. Every employer shall do every
16 other thing reasonably necessary to protect the life, safety, and health of employees.

17 223. Labor Code section 6402 prohibits the following:

18 224. No employer shall require, or permit any employee to go or be in any employment
19 or place of employment which is not safe and healthful.

20 225. Similarly, Labor Code section 6404 provides as follows:

21 226. No employer shall occupy or maintain any place of employment that is not safe and
22 healthful.

23 227. In addition to the above, Labor Code section 6403 requires that employees provide
24 safety devices to its employees. Labor Code section 6403 states:

25 228. No employer shall fail or neglect to do any of the following:

26 229. (a) To provide and use safety devices and safeguards reasonably adequate to render
27 the employment and place of employment safe.

28 230. (b) To adopt and use methods and processes reasonably adequate to render the

1 employment and place of employment safe.

2 231. (c) To do every other thing reasonably necessary to protect the life, safety, and health
3 of employees.

4 232. Similarly, Labor Code section 6406(d) states the following:

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

7 234. Finally, Labor Code section 6407 provides:

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

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

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

28 238. PLAINTIFF is informed and believes and thereon alleges that these failures include,
50
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
2 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
3 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
4 conditions between PLAINTIFF and/or other Aggrieved Employees.

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

13 240. At all relevant times, DEFENDANTS had and have a policy and practice of failing
14 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
15 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
16 Employees and/or their exclusive representatives, who were on the premises at the same worksite
17 as a qualifying individual who was within the infectious period that they may have been exposed to
18 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
19 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
20 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
21 Employees who were on the premises at the same worksite as the qualifying individual within the
22 infectious period and the exclusive representative, if any, with information regarding COVID-19-
23 related benefits to which the employee may be entitled under applicable federal, state or local laws,
24 including but not limited to, workers' compensation, and options for exposed employees, including
25 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
26 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
27 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
28 6432.

1 241. At all relevant times, DEFENDANTS had and have a policy and practice of failing
2 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
3 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
4 who were on the premises at the same worksite as the qualifying individual within the infectious
5 period, and the employers of the subcontracted employees who were on the premises at the same
6 worksite as the qualifying individual within the infectious period and the exclusive representative,
7 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
8 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
9 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
10 without limitation, Labor Code sections 6409.6 and 6432.

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

19 243. PLAINTIFF is informed and believes , and based thereon alleges that
20 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
21 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
22 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
23 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
24 blowers; and a sufficient number of toilets to be used by each of sex of employee.

25 244. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
26 violated the Labor Code sections described herein, including without limitation, for failure to:
27 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to
28 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other

1 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual
2 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
3 California and local laws.

4 245. Based on information and belief, DEFENDANTS failed to protect Aggrieved
5 Employees from exposure to COVID-19 due to, including but not limited to, failing to
6 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
7 hazards related to the COVID-19 virus.

8 246. As such, DEFENDANTS failed to comply with the occupational safety and health
9 standards, failed to do everything reasonably necessary to protect the health and safety of
10 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
11 necessary to maintain a safe and healthful workplace.

12 247. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
13 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
14 is subject to civil penalties.

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

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

whether those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a party to this action or not.

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

PRAYER FOR RELIEF

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

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1 13. For such other and further relief that the Court deems just and proper.

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3 Dated: February 20, 2024

CROSNER LEGAL, PC

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By: *Nikki Trenner*

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Jamie Serb, Esq.
Nikki Trenner, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

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Dated: February 20, 2024

CROSNER LEGAL, PC

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By: *Nikki Trenner*

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Nikki Trenner, Esq.
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Attorneys for Plaintiff

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